

# OPEN MEETING ITEM

**COMMISSIONERS**  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH



0000158463

ARIZONA CORPORATION COMMISSION RECEIVED

2014 DEC -5 P 1:17

DATE: DECEMBER 5, 2014

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKET NO.: RE-00000C-14-0112

**ORIGINAL**

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judges Sarah N. Harpring and Teena Jibilian. The recommendation has been filed in the form of an Opinion and Order on:

**RULEMAKING**  
**(MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judges by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 15, 2014

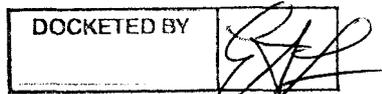
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judges to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 18, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

DEC 05 2014



*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

IN THE MATTER OF THE PROPOSED  
RULEMAKING TO MODIFY THE RENEWABLE  
ENERGY STANDARD AND TARIFF RULES.

DOCKET NO. RE-00000C-14-0112

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

DATES OF HEARING: November 12 and 14, 2014  
PLACES OF HEARING: Tucson and Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGES: Sarah N. Harpring and Teena Jibilian  
IN ATTENDANCE: Commissioner Brenda Burns  
APPEARANCES: Ms. Maureen Scott, Senior Staff Counsel, and Ms. Janet Wagner, Assistant Chief Counsel, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

This matter is a rulemaking to amend two sections within the Arizona Corporation Commission's ("Commission's") Renewable Energy Standard and Tariff ("REST") rules, specifically Arizona Administrative Code ("A.A.C.") Sections R14-2-1805 ("§ 1805") and R14-2-1812 ("§ 1812"). The rulemaking would increase the information that an Affected Utility must report annually to the Commission by requiring an Affected Utility to report all of the kWhs of energy produced within the Affected Utility's service territory, with differentiation between the kWhs for which the Affected Utility owns the Renewable Energy Credits ("RECs") and the kWhs for which the Affected Utility does not own the RECs. The rulemaking would also expressly allow the Commission to consider all available information when reviewing an Affected Utility's report filed under § 1812(C).

\* \* \* \* \*

1 Having considered the entire record herein and being fully advised in the premises, the  
2 Commission finds, concludes, and orders that:

3 **FINDINGS OF FACT**

4 **Background**

5 1. On February 26, 2014, in Docket Nos. E-01345A-10-0394 et al. (“Track & Record  
6 Docket”<sup>1</sup>), the Commission issued Decision No. 74365, “Opinion and Order on Track and Record  
7 and Potential Alternatives.” In Decision No. 74365 (February 26, 2014), the Commission made the  
8 following background Findings of Fact that are helpful to an understanding of this rulemaking:

9 **II. Background**

10 **A. DG Carve-out**

11 51. The REST rules require Affected Utilities (electric utilities  
12 in Arizona subject to the REST rules), including the Utilities involved in  
13 this proceeding, to serve a portion of their annual retail load with  
14 renewable energy. Thirty percent of Affected Utilities’ renewable energy  
15 requirements must come from renewable distributed generation (“DG”).  
16 Half of this Distributed Renewable Energy Requirement, (“DG carve-  
17 out”) must come from residential applications, and half from non-  
18 residential, non-utility applications. Each year, the renewable requirement  
19 increases incrementally. In 2014, Affected Utilities must serve 4.50  
20 percent of their retail load with renewable energy, 1.35 percent of which  
21 must be DG. After 2024, the REST rules require Affected Utilities to  
22 serve 15 percent of their retail load with renewable energy, 4.50 percent of  
23 which must be DG.

18 **B. RECs**

19 52. To establish compliance with the REST rules, including the  
20 DG carve-out, Affected Utilities must acquire Renewable Energy Credits  
21 (“RECs”) from Eligible Renewable Energy Resources. An Affected  
22 Utility may use RECs acquired in any year to meet annual REST  
23 requirements, including DG requirements, and RECs are retired upon  
24 being used for compliance purposes.

25 53. In this case, we examine the parties’ recommendations  
26 regarding how the Utilities can comply with the DG carve-out in the

25 <sup>1</sup> The following were parties to the “Track & Record Docket”: Arizona Public Service Company (“APS”); Tucson  
26 Electric Power Company (“TEP”); UNS Electric, Inc. (“UNSE”); Freeport-McMoRan Copper & Gold, Inc. and  
27 Arizonans for Electric Choice and Competition (collectively “AECC”); Solar Energy Industries Association (“SEIA”);  
28 Arizona Solar Industries Association; Western Resource Advocates; the Vote Solar Initiative; NextEra Energy Resources,  
LLC; Wal-Mart Stores, Inc. and Sam’s West Inc.; U.S. Department of Defense and all other Federal Executive Agencies  
 (“DOD/FEA”); NRG Solar, LLC; Kevin Koch; the Residential Utility Consumer Office (“RUCO”); and the  
 Commission’s Utilities Division (“Staff”). Docket Nos. E-01345A-10-0394 et al., concerned APS, TEP, and UNSE 2013  
 REST Implementation Plans as well as an APS application for approval of certain “Green Power” rate schedules.

1 REST rules in the absence of incentives with which Utilities can pay for  
2 RECs.

3 54. Currently, the Utilities acquire RECs from the owners of  
4 eligible DG projects through contractual agreements by which customers  
5 transfer DG RECs to the Utilities in exchange for REST incentives that  
6 help pay for the cost of installing DG systems. These incentives have  
7 taken the form of residential and commercial up-front incentives ("UFIs")  
8 and commercial performance-based incentives ("PBIs"), which are funded  
9 by a REST surcharge assessed monthly to every retail electric service.  
10 The surcharge is set annually for each Utility pursuant to Commission-  
11 approved REST tariffs.

12 55. APS's witness Gregory Bernosky testified that APS is in  
13 compliance with residential DG requirements through 2016 and with  
14 commercial DG requirements through 2020. TEP and UNS witness  
15 Carmine Tilghman testified that UNS is in compliance for its residential  
16 and commercial DG requirements through 2013, and that TEP will need to  
17 acquire new residential DG RECs in 2014, and new commercial DG RECs  
18 in 2020.

19 56. The REST rules require the Utilities to file a proposed  
20 implementation plan annually on July 1, and an annual compliance report  
21 each April 1.

22 57. UFIs were as high as \$4.00 per watt for residential DG  
23 systems in 2006, but by 2013 had decreased to \$0.10 per watt.

### 24 C. Track and Record Issue

25 58. In Decision No. 72737 (January 18, 2012), the Commission  
26 noted that APS's future ability to meet its annual DG REST requirement  
27 might be in question, due to the rapid lowering of installed costs for solar  
28 photovoltaic ("PV") systems, and the resulting reduction in APS's REST  
surcharge-funded UFI payments to customers with DG systems in  
exchange for RECs. Decision No. 72737 ordered APS to suggest possible  
solutions to the emerging issue in APS's 2013 REST Plan filing.

59. In compliance with Decision No. 72737, APS included the  
"Track and Record" proposal in its 2013 REST filing in Docket No. E-  
01345A-12-0290. In that filing, APS proposed, in the absence of  
incentives, to simply track all energy produced by DG systems installed on  
APS's system and count that energy for purposes of REST rules  
compliance, hence the proposal's name "Track and Record."

60. In its 2013 REST filing in Docket No. E-01933A-12-0296,  
TEP also addressed the issue of REST compliance in the absence of  
incentives to pay for RECs. TEP offered four possible solutions to  
achieving REST compliance in the event TEP no longer uses REST  
incentives to purchase RECs from customers who install DG.

61. In its 2013 REST filing in Docket No. E-04204A-12-0297,  
UNS offered the same four potential solutions as TEP.

62. On October 18, 2012, Staff filed Staff Memoranda and  
Recommended Orders on the Utilities' 2013 REST filings. In those

1 filings, Staff recommended approval of the APS-proposed Track and  
 2 Record mechanism for REST rule compliance requirements for all three  
 3 Utilities, to be effective for 2013 and beyond for compliance reporting  
 4 beginning April 1, 2014. However, Staff noted in its analysis in the APS  
 5 2013 REST docket that several comments had been filed raising issues  
 6 with APS's Track and Record proposal in regard to the integrity of RECs.

7 63. Between October 29, 2012, and January 17, 2013, WRA,  
 8 SEIA, the Center for Resource Solutions, the Center for Biological  
 9 Diversity, the U.S. Department of Veterans Affairs ("VA"), Vote Solar,  
 10 SolarCity, and AriSEIA filed comments in the APS 2013 REST docket, all  
 11 opposing approval of the APS-proposed Track and Record mechanism for  
 12 REST rule compliance requirements. Similar comments were filed in that  
 13 timeframe in the TEP 2013 REST docket.

14 64. On January 17, 2013, Staff filed memoranda in the  
 15 Utilities' 2013 REST filing dockets. In each filing, Staff noted that a  
 16 number of stakeholders had filed comments raising a variety of concerns  
 17 about adoption of APS's Track and Record proposal. Staff stated that it  
 18 believed the Track and Record proposal had merit, but that due to the  
 19 number and tenor of the opposing comments, the issues related to Track  
 20 and Record and its potential alternatives merited a hearing. Staff  
 21 recommended that the Commission act upon all other aspects of the  
 22 Utilities' 2013 REST plans, but defer a determination on the Track and  
 23 Record issue, and potential alternatives thereto, to a hearing process.

24 65. Decision Nos. 73636, and 73637, and 73638 did not adopt  
 25 the Track and Record proposal for APS, TEP, or UNS. All three  
 26 Decisions directed the Hearing Division to schedule a procedural  
 27 conference, entertain requests for intervention, hold a hearing, and prepare  
 28 a Recommended Opinion and Order for Commission consideration on the  
 Track and Record proposal and potential alternatives, with an evaluation  
 of whether adoption of the Track and Record proposal (or alternatives  
 thereto) would require modifications to the REST rules.

66. A full evidentiary hearing was held before a duly  
 authorized Administrative Law Judge of the Commission. Evidence and  
 legal arguments were taken and entered into the record.<sup>2</sup>

2. In Decision No. 74365, the Commission determined that it was "reasonable to allow  
 the Utilities to request one-year waivers as needed until the REST rules are modified to achieve a  
 long-term solution," that the granting of waivers was a short-term solution, that the Commission did  
 "not desire to lessen the requirement that at least 15% of a utility's retail load be derived from  
 renewable energy by 2025," and that a continuous practice of granting waivers would result in "an  
 implicit reduction of the 15% goal." (Decision No. 74365 at 51.) The Commission also found that

<sup>2</sup> Decision No. 74365 (February 26, 2014) at 9-13 (footnotes omitted). Official notice of this Decision is taken.

1 “it may be necessary to develop a new methodology to track the utilities’ compliance with the REST  
 2 rules in order to achieve a long-term solution.” (*Id.*) The Commission ordered the REST rules  
 3 opened, in a new docket, “for the purpose of developing a new methodology for utilities to comply  
 4 with renewable energy requirements that is not solely based on the use of RECs.” (*Id.* at 55.) The  
 5 Commission directed Staff, after consultation with parties to the Track & Record Docket and other  
 6 interested stakeholders, to file proposed new rules with the Commission no later than April 15, 2014,  
 7 so that a Notice of Proposed Rulemaking could be addressed at the May 2014 Open Meeting or as  
 8 soon as practical thereafter. (*Id.* at 55.)

9 3. The Commission also ordered that, until the REST rules were modified to provide a  
 10 long-term solution, APS, TEP, and UNSE, in their next REST Implementation Plan filings, could  
 11 request permanent one-year waivers of the requirements of § 1805.<sup>3</sup> (*Id.* at 54.) The Commission  
 12 further required each utility granted such a waiver to augment its “Compliance Report,” filed under §  
 13 1812, by providing information regarding DG<sup>4</sup> in its service territory for which the utility had not  
 14 acquired RECs, “not for the purpose of demonstrating the utility’s compliance . . . , but . . . solely for  
 15 the purpose of informing the Commission of the amount of renewable energy being produced in the  
 16 utility’s service territory.” (*Id.* at 56.)

17 4. The Commission has not held proceedings or issued decisions specifically concerning  
 18 whether affected utilities have achieved or have not achieved compliance with the annual REST  
 19 standards in § 1804 and § 1805. (*See* Tr. I at 16-17, 34.) Rather, the Commission has used the  
 20 reports filed each April under § 1812 when reviewing the affected utilities’ REST Implementation  
 21 Plans for the coming year filed each July under § 1813. (*See* Tr. I at 34.) If an affected utility has  
 22 failed to achieve annual compliance with the REST standard as set forth in § 1804 and § 1805, the  
 23

24 <sup>3</sup> The waivers were described as “permanent” because they would not expire—*i.e.*, the annual requirement waived  
 would not be an obligation going forward.

25 <sup>4</sup> The REST rules define distributed generation as follows:

26 “Distributed Generation” means electric generation sited at a customer premises,  
 27 providing electric energy to the customer load on that site or providing wholesale  
 28 capacity and energy to the local Utility Distribution Company for use by multiple  
 customers in contiguous distribution substation service areas. The generator size and  
 transmission needs shall be such that the plant or associated transmission lines do not  
 require a Certificate of Environmental Compatibility from the Corporation Commission.

A.A.C. R14-2-1801(E).

1 affected utility is required to include a notice of noncompliance in its report filed under § 1812. (*See*  
 2 § 1815(A).) The affected utility must include in its notice of noncompliance a computation of the  
 3 shortfall for the year, a plan for making up the shortfall in the current year, and an estimate of the  
 4 costs to meet the shortfall. (§ 1815(B).) The REST rules do not require the Commission to take any  
 5 particular action in response to an affected utility's notice of noncompliance. (*See* § 1815(C) and  
 6 (D).) In fact, the REST rules do not specify any penalty for noncompliance with the annual  
 7 requirements set forth in § 1804 and § 1805, but instead specify a penalty that the Commission may  
 8 impose after determining that an affected utility has failed to comply with its Commission-approved  
 9 REST Implementation Plan. (§ 1815(C).) The specific penalty that the rules authorize the  
 10 Commission to impose, in its discretion after notice and an opportunity to be heard, is denial of rate  
 11 recovery for the costs to meet the shortfall identified in the notice of noncompliance.<sup>5</sup> (§ 1815(C).)  
 12 The Commission's focus in implementing the REST rules has been on ensuring that affected utilities'  
 13 REST Implementation Plans are designed to meet the standards in the REST rules and to serve the  
 14 public interest, not on punishment for failure to meet the standards.<sup>6</sup>

### 15 **Procedural History**

16 5. On March 31, 2014, Staff filed a Memorandum requesting that a generic docket be  
 17 opened for the purpose of commencing a proposed rulemaking on the REST rules as directed in  
 18 Decision No. 74365. As a result, this Docket was opened.<sup>7</sup>

19 6. On April 4, 2014, Staff filed a Notice of Compliance, in which Staff set forth seven  
 20 different options for REST rules modification ("Seven Options"). Staff stated that its goal with the  
 21 Seven Options was to engender discussion and have the Commission provide Staff with direction on  
 22 whether and in what manner the Commission desired to modify the REST rules. Staff also raised a  
 23 "fundamental question" needing to be answered at the outset—whether the Commission wants to  
 24

25 <sup>5</sup> The REST rules do not limit the Commission's general authority to take action or impose penalties after notice and  
 an opportunity to be heard. (§ 1815(D).)

26 <sup>6</sup> This has been the case since the REST rules were originally adopted, as the Commission consciously decided at that  
 time that the enforcement mechanism adopted in the rules—denial of rate recovery for the costs to meet a shortfall—  
 27 would be based upon a finding that an affected utility had failed to comply with its REST Implementation Plan, as  
 opposed to a finding of noncompliance with the REST standard itself. (*See* Decision No. 69127 (November 14, 2006) at  
 Appendix B at 36-37.) Official notice is taken of this Decision.

28 <sup>7</sup> Subsequent references to filings that do not specify a Docket are to filings that have been made in this Docket.

1 track information regarding DG and Distributed Renewable Energy<sup>8</sup> (“DE”) activity in each utility’s  
 2 service territory regardless of ownership or only for DG/DE activity that each utility owns or  
 3 purchases. Staff stated that the answer to that question would more clearly define what changes to  
 4 the REST rules, if any, might be needed. Staff also stated that after consultation among Staff, parties  
 5 to the Track & Record Docket, and other stakeholders, Staff had determined that consensus would  
 6 not be reached as to the approach or language to use for new REST rules. Staff’s Seven Options  
 7 included the following, each of which was briefly described:

- 8 1. Track & Monitor,
- 9 2. Process Where Utility Would Purchase Least Cost RECs or kWh (“Least Cost  
 10 RECs”),
- 11 3. Creation of Maximum Conventional Energy Requirement (“Maximum Conventional  
 12 Energy”),
- 13 4. Mandatory Upfront Incentives (“UFIs”),
- 14 5. REC Transfer Associated with Net Metering (“REC Transfer”),
- 15 6. Recovery of DG/DE Costs Through the Standard Rate Case Process (“Rate Case  
 16 Recovery”), and
- 17 7. Track & Record.

18 Staff requested that parties to the Track & Record Docket and any other interested stakeholders  
 19 provide initial comments on the Seven Options by April 21, 2014, and provide any reply comments  
 20 by April 28, 2014.

21 7. On April 21, 2014, the Center for Resource Solutions<sup>9</sup> (“CRS”) filed its Comments on  
 22 the Seven Options. CRS responded to each of the Seven Options, opposing most of them, at least in  
 23 part, due to concern that non-utility-owned DG/DE would be used to determine compliance with the  
 24 REST rules, that this use would result in a claim on the associated RECs, and that the associated  
 25 RECs would thus be ineligible for use in other state Renewable Portfolio Standard (“RPS”) markets

26 <sup>8</sup> The REST rules define Distributed Renewable Energy Resources as applications of specifically listed and defined  
 27 technologies that are located at a customer’s premises and that displace conventional energy resources that would  
 otherwise be used to provide electricity to Arizona customers (A.A.C. R14-2-1801(B).)

28 <sup>9</sup> CRS is a nonprofit organization that certifies RECs through a program called Green-e Energy. CRS’s Executive  
 Director, Jennifer Martin, provided testimony in the Track & Record Docket.

1 (i.e., for compliance in other states) and in the voluntary market for RECs. CRS stated the following:

2 [A]ny use of renewable energy generation . . . , its attributes and/or  
3 associated RECs toward the REST constitutes a claim, eroding the value  
4 of an associated voluntary market REC. Such is the case even if the  
5 associated RECs contractually remain with the installer or generation  
6 owner. The statement "Such REC may not be considered used or  
7 extinguished by any entity without approval and proper documentation  
8 from the entity creating the REC." will not alleviate concerns about REC  
9 value for buyers of RECs who wish to use them outside of the Arizona  
10 REST, including other state RPS markets and in the voluntary market for  
11 RECs.<sup>10</sup>

12 CRS described the Arizona voluntary market as "vibrant" and stated that Green-e Energy  
13 verification data showed that, in 2011, thousands of customers voluntarily purchased renewable  
14 energy in Arizona, and Arizona renewable generators generated 29,997 MWh that were sold into the  
15 voluntary REC market.<sup>11</sup> CRS also asserted that the primary market for voluntary RECs in the U.S.  
16 is for RECs certified by Green-e Energy, which certifies and verifies approximately two-thirds of  
17 overall U.S. voluntary renewable energy sales and more than 90 percent of U.S. voluntary retail  
18 REC sales. CRS emphasized the importance of undisputed ownership of and title to renewable  
19 energy attributes, including REC ownership, the claim to own or use renewable energy, and the  
20 ability to sell that claim and further stated that the Commission's adoption of a policy that would  
21 bring those rights into question would "significantly reduce the value of renewable energy for DE  
22 owners in the state and . . . hinder future economic growth in this sector in Arizona."<sup>12</sup> In closing,  
23 CRS "urge[d] the Commission to maintain its current policy to require the utilities to acquire RECs  
24 to demonstrate REST compliance."<sup>13</sup>

25 8. On April 21, 2014, the Grand Canyon State Electric Cooperative Association, Inc.  
26 ("GCSECA")<sup>14</sup> filed the Cooperatives' Comments, urging the Commission to reevaluate the REST

27 <sup>10</sup> CRS Comments of April 21, 2014, at 3.

28 <sup>11</sup> CRS identified APS and the Salt River Project ("SRP") as sellers and identified Apollo Group, Inc., University of Phoenix, Arid Zone Trees, Arizona Lithographers, ConserVentures, Evolution Beauty Technologies, Inc., Forever Resorts/Big Bend Resorts, Chisos Mountain Lodge, Forever Resorts/Grand Canyon North Rim, LLC, International Student Exchange Cards, Inc., and Prime Time Thermographics as purchasers.

<sup>12</sup> CRS Comments of April 21, 2014, at 4.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> For purposes of the REST rules, GCSECA identified the following as Arizona cooperative members: Duncan Valley Electric Cooperative, Inc.; Graham County Electric Cooperative, Inc.; Mohave Electric Cooperative, Inc.; Navopache Electric Cooperative, Inc.; Sulphur Springs Electric Cooperative, Inc.; and Trico Electric Cooperative, Inc.

1 rules to recognize market changes, while protecting the current ability for cooperatives to establish  
2 their own renewable energy and DG requirements based upon their individual REST Implementation  
3 Plans, which are reviewed and approved by the Commission annually. The cooperatives did not  
4 support any of the Seven Options.

5 9. On April 21, 2014, RUCO filed RUCO's Comments on the Seven Options. RUCO  
6 stated that only Track & Record had the potential to strike the correct balance between all parties, as  
7 every other option would either cost ratepayers money, invalidate RECs, or present additional  
8 complexities. RUCO suggested the following options, in order of preference, as striking the right  
9 balance: (1) The Recommended Opinion and Order ("ROO") from the Track & Record Docket, with  
10 Commissioner Pierce's Amendment Number 1 from the Open Meeting of February 5, 2014;<sup>15</sup> (2)  
11 Track & Monitor based on capacity, for which RUCO included a description in an appendix;<sup>16</sup> (3)  
12 Staff's Track & Record option, if implemented carefully; or (4) A "Back fill" policy requiring those  
13 who want to keep their RECs to pay a small fee, applied to the REST surcharge, so that the utility  
14 would have the resources to replace their RECs at no cost to other ratepayers. RUCO stated that  
15 "very few options [would] strike a better balance than the ROO"; that it would be "detrimental to  
16 ratepayers to sideline out of state investment"; and that choosing the "incorrect policy" would result  
17 in effectively punishing businesses and households that held onto their RECs rather than taking  
18 incentives when they were available.

19 10. On April 21, 2014, AECC filed a Notice that it would not be filing initial comments  
20 on the Seven Options, but desired to reserve the right to file reply comments.

21 11. On April 21, 2014, SEIA filed Comments on the Seven Options, stating that SEIA had  
22 supported adoption of the ROO in the Track & Record Docket and that, although SEIA continued to  
23 believe that the REST rules provide sufficient ability for utilities to meet compliance through  
24 requesting waivers, SEIA believed this matter could be a useful forum to provide the additional

25 <sup>15</sup> Decision No. 74365 with Commissioner Brenda Burns's Proposed Amendment No. 1 significantly amended the  
26 ROO in the Track & Record Docket by inserting, *inter alia*, the requirement for a rulemaking to revise the REST rules.

27 <sup>16</sup> In the appendix, RUCO stated that the intent of its policy would be permanently to remove a specific year's  
28 requirement for a portion of the REST to be met with DG if analysis (comparison with a market proxy) showed that the  
amount of DG capacity installed without incentives demonstrated market self-sufficiency. RUCO asserted that RECs  
would not be double counted or claimed and provided a quote from the testimony of CRS's Ms. Martin to support that.  
RUCO emphasized that implementation would need to be done carefully to ensure that RECs were not invalidated.

1 certainty the Commission desired. SEIA stated that any rule change or new Commission policy  
 2 adopted in this matter should adhere to Staff's five original policy goals, supported in the ROO,  
 3 which SEIA identified as follows:

- 4           [Goal] 1)       Provide a clear and easily documented way for utilities to  
                                   achieve compliance under the REST rules;  
 5           [Goal] 2)       Recognize reality regarding how much renewable energy  
                                   generation is occurring in a utility's service territory and  
                                   what fraction has been procured by utilities;  
 6           [Goal] 3)       Minimize the cost to ratepayers;  
 7           [Goal] 4)       Maximize value to the extent possible for those who  
                                   undertake DG installations and Arizona as a whole; [and]  
 8           [Goal] 5)       Be minimally invasive to the REST rules.<sup>17</sup>

10 SEIA stated that many of the Seven Options would fall short of meeting the five policy goals, and  
 11 specifically opposed Track & Monitor, Maximum Conventional Energy, and REC Transfer, stating  
 12 that each would violate Goal 4 by diminishing the value of RECs produced by customers electing to  
 13 install DE in Arizona and might also violate Goal 5 by necessitating fundamental changes to the  
 14 REST rules to allow utilities to meet REST rule requirements based on the actions of others,  
 15 allowing the utilities to become "free riders." SEIA also asserted that Maximum Conventional  
 16 Energy might eliminate the DG carve-out, which SEIA characterized as a "substantial rule change"  
 17 that was not supported in the ROO or by most parties to the Track & Record Docket. SEIA stated  
 18 that a waiver of the DE requirement might be in the public interest, asserting that Track & Record  
 19 alluded to a waiver process based on DE market activity, but also stated that Track & Record might  
 20 not prevent double counting of RECs. SEIA expressed support for Least Cost RECs, stating that the  
 21 elements of Least Cost RECs, modified through revisions described as "SEIA's Proposed  
 22 Alternative," could uphold all five policy goals. SEIA's Proposed Alternative would have the  
 23 Commission (1) adopt the ROO from the Track & Record Docket, (2) adopt a specific detailed  
 24 process for waiver determinations, and (3) allow utilities with waivers to meet their REST  
 25 obligations with non-DE RECs. SEIA asserted that no change to the REST rules would be needed to  
 26 implement SEIA's Proposed Alternative, but that SEIA could support minimal rule changes to  
 27

28 <sup>17</sup> SEIA Comments of April 21, 2014, at 2 (footnotes omitted).

1 include adding a reporting requirement for all DE capacity installed in an affected utility's service  
2 territory, with differentiation between capacity for which the utility did and did not receive RECs,  
3 and adding specific provisions in A.A.C. R14-2-1816 related to waivers. According to SEIA,  
4 SEIA's Proposed Alternative would preserve the value of RECs for DG customers by avoiding  
5 double-counting without lowering the overall REST requirement. Additionally, however, SEIA  
6 provided an "Alternative Proposal" that would involve utilities' exchanging utility-owned RECs (of  
7 any kind) for customers' DE RECs, something that SEIA asserted could be done with no incremental  
8 cost to customers because of "the anticipated surplus of utility-scale RECs."

9       12. On April 21, 2014, Western Resource Advocates ("WRA") filed its Comments  
10 regarding the Seven Options, in which it provided a table analyzing each option for practicality,  
11 direct costs incurred for implementation, whether RECs would be devalued, and whether market  
12 confidence regarding DE in Arizona would be weakened. WRA asserted that Least Cost RECs  
13 presented the best option based on this analysis, as it could be implemented via a simple-to-use web-  
14 based market acquisition process, its costs would be low, it would not devalue RECs by making any  
15 claim on RECs that a utility did not own, and it would retain market confidence in the Commission's  
16 policies to support DE. WRA advocated for the adoption of Least Cost RECs and asserted that no  
17 changes to the REST rules were needed because the Commission could authorize utilities to purchase  
18 RECs to meet their DG requirements through the implementation plan process, competitive market  
19 acquisition would result in the lowest cost RECs, and the REST rules already require utilities to  
20 report both the amount of DG produced and the number of RECs obtained.

21       13. On April 21, 2014, The Vote Solar Initiative ("Vote Solar") filed a Notice stating that  
22 it concurred with and supported the comments filed by WRA.

23       14. On April 21, 2014, TEP/UNSE filed their comments on the Seven Options, asserting  
24 that the REST rules should be modified to reflect significant market changes since their adoption,  
25 most significantly the increase in DG/DE use resulting from reductions in the cost of PV technology  
26 and the emergence of the leased ownership model. TEP/UNSE stated that it anticipated  
27 interconnection of DG systems with approximately 10 MW of total capacity during 2014, without  
28 paying any incentives. TEP/UNSE asserted that the acquisition of the RECs for such DG systems is

1 not possible without incentives, although the REST rules require submission of such RECs for  
2 compliance. TEP/UNSE expressed support for Track & Monitor, agreeing with a Staff determination  
3 that it would not result in double-counting of RECs and further asserting that it would allow utilities  
4 to achieve REST rule compliance with no additional costs to customers and with less frequent need  
5 for DG waivers. TEP/UNSE stated that while it would not object to REC Transfer, it was not  
6 advocating it in this matter due to controversy surrounding net metering. TEP/UNSE opposed all of  
7 the other Seven Options as costly, complicated, controversial, or unfair.

8         15. On April 21, 2014, The Alliance for Solar Choice ("TASC") filed Comments stating  
9 that the Commission did not need to choose between preserving the DG carve-out and preserving the  
10 integrity of RECs because slight modifications to Track & Record would preserve REC integrity,  
11 preserve the DG carve-out, promote the uptake of DE, and result in no additional costs to ratepayers.  
12 TASC asserted that the rest of the Seven Options were inadequate and unworkable either because  
13 they would not maintain both the DG carve-out and REC integrity or because of other policy  
14 shortcomings. TASC proposed a Modified Track & Record that would require utilities to report the  
15 total kWhs of energy created from incentivized and unincentivized DE resources each year, would  
16 compare the annual incremental increase in total kWhs so produced with the historic average annual  
17 increase from prior years, and would allow the utility to seek a waiver from that year's required  
18 incremental increase in DG under the REST rules if the annual increase met or exceeded the historic  
19 average annual increase. TASC asserted that because the Modified Track & Record would not  
20 involve a one-to-one link between kWhs and the DG waiver, the integrity of RECs would be  
21 preserved. TASC also asserted that the Commission would be focusing on the health of the market in  
22 the absence of incentives as opposed to compliance with the DG carve-out. TASC provided specifics  
23 regarding how it believed the waivers could and should be implemented. According to TASC, the  
24 Modified Track & Record would provide benefits including REC retention by owners, retention of  
25 the DG carve-out, no increased costs to ratepayers, continued annual reporting of renewables, and no  
26 unnecessary incentives.

27         16. On April 21, 2014, APS filed Comments on the Seven Options, supporting Track &  
28 Monitor as the best option to recognize all DE while ensuring low customer costs, preserving RECs

1 and the DG carve-out, and providing a “clear and certain path for compliance with the DG carve  
 2 out.”<sup>18</sup> APS opposed options that it said would require utilities to purchase RECs, would require  
 3 complete revamping of the REST rules, would require customers to surrender RECs in return for net  
 4 metering service,<sup>19</sup> or would focus on cost recovery rather than on finding a way to achieve DG  
 5 carve-out compliance. APS also criticized Track & Record’s lack of clarity regarding a path for  
 6 utilities to comply with the DG carve-out.<sup>20</sup>

7 17. On April 22, 2014, Staff filed correspondence showing that it had sent the Seven  
 8 Options filing to Jennifer Martin, Executive Director of CRS, with an invitation for CRS to provide  
 9 input on the Seven Options, including any suggested modifications thereto. Staff also expressed a  
 10 desire for CRS to share information regarding other states’ use of RECs and, specifically, CRS’s  
 11 views of Texas’s handling of RECs.

12 18. On April 22, 2014, the Arizona Solar Deployment Alliance (“ASDA”) filed comments  
 13 to the Seven Options, stating that it was not necessary to revise the REST rules and suggesting that  
 14 the Commission instead adopt a process change ASDA called the Renewable Energy Credit  
 15 Acquisition Program (“RECAP”). ASDA asserted that RECAP would allow customers installing DE  
 16 systems independent of REC purchase programs to choose, during the interconnection process, to  
 17 assign RECs to the utility voluntarily for a 20-year term at no charge, to provide the utility the option  
 18 to purchase RECs by the end of January of the next year at a specified cost set by the Commission  
 19 during REST Implementation Plan proceedings, or to keep RECs. Under RECAP, utilities would  
 20 purchase RECs only if REC donations received were insufficient to reach compliance for a given  
 21 year. ASDA asserted that RECAP would preserve REC integrity while still allowing the utilities to  
 22 take advantage of renewable energy in their service territories.

23  
 24 <sup>18</sup> APS Comments of April 21, 2014, at 2.

25 <sup>19</sup> APS asserted, however, that requiring customers to exchange their RECs for net metering tariff service “would not  
 26 result in a compensable taking of property [because] RECs are not property; they were created by the Commission as an  
 27 accounting measure to facilitate measuring utilities’ compliance with the REST.” (APS Comments of April 21, 2014, at  
 28 3.) APS also stated that if RECs were property (“they are not”), the REC Transfer would not involve a taking of property  
 without just compensation under the U.S. or Arizona Constitutions because of the voluntary nature of the net metering  
 program. (*Id.* (citing *Bowles v. Willingham*, 321 U.S. 503, 517-18 (1944)).) APS has since acknowledged that RECs  
 have value in other forums. (*See* Tr. II at 25.)

<sup>20</sup> However, APS opined that Track & Record would not result in double counting of RECs because DG RECs would  
 not be reported for informational purposes. (APS Comments of April 21, 2014, at 4.)

1           19.     On April 28, 2014, SEIA filed reply comments, urging the Commission to consider  
2 that Track & Monitor was opposed by most parties to the proceeding and supported only by APS and  
3 TEP. SEIA asserted that Track & Monitor would render RECs ineligible for certification because of  
4 the manner in which certifying organizations would count the RECs regardless of how the  
5 Commission thought the certifying organizations should count the RECs. SEIA asserted that entities  
6 seeking RECs such as Walmart, DOD/FEA, and others would thus be discouraged from making solar  
7 investments in Arizona and would instead make their investments in regulatory environments more  
8 supportive of DE. SEIA also opposed Track & Monitor as a reduction in the REST requirement and  
9 a step backward for Arizona. SEIA urged the Commission to reject Track & Monitor and to adopt  
10 either the waiver approach supported in the Track & Record Docket ROO, with additional waiver  
11 criteria such as those proposed by SEIA in its previous comments, or a transactional approach that  
12 would give DE customers the option to provide utilities with RECs in exchange for something of  
13 comparable value.

14           20.     On April 28, 2014, AECC filed Notice that it would not be filing reply comments.

15           21.     On April 28, 2014, TEP/UNSE filed reply comments supporting Track & Monitor,  
16 asserting that it would achieve the goal of capturing all DE generation activity in a utility's service  
17 territory when incentives are no longer needed to encourage installations and that it would allow  
18 compliance with the REST rules in the most cost-effective manner, without additional costs to  
19 customers. TEP/UNSE stated that many of the other proposals had already been considered and  
20 rejected in the Track & Record Docket.

21           22.     On April 28, 2014, ASDA filed its reply comments, stating that the Commission  
22 should avoid any approach, such as Track & Monitor, that could lead to devaluation of RECs owned  
23 by private parties. ASDA expressed support for Least Cost RECs, stating that it was favored by a  
24 majority of parties and that it could be adapted to the RECAP model proposed by ASDA previously.  
25 ASDA stated that REC transfers appeared to be the only way to recognize REST rules compliance  
26 without compromising REC values. ASDA emphasized that its RECAP proposal would not require a  
27 rule change, expressed openness to suggestions for revision to the RECAP proposal, and offered to  
28 meet with Staff and other parties to obtain support for RECAP.

1           23.     On April 28, 2014, APS filed its responsive comments, stating that RUCO's modified  
2 Track & Monitor should be seriously considered because it would preserve RECs by not requiring  
3 utilities to retire RECs to establish REST compliance, would allow recognition of all DG in a service  
4 area, would provide utilities certainty by permitting prospective waivers of the DG carve-out if  
5 sufficient capacity has been installed, and would not impose additional costs on customers. APS  
6 opposed SEIA's proposals as too costly to customers because utilities would need to purchase RECs  
7 to comply with either of them, which APS stated was avoidable. APS opposed TASC's proposal as  
8 an increase in the DG carve-out that would result in uncertainty for utilities and a shifting of costs to  
9 customers without DG and further asserted that TASC's proposal should not be adopted because the  
10 parties to the Track & Record Docket had not had an opportunity to cross-examine TASC's witness  
11 regarding the proposal. APS asserted that Staff's Track & Monitor would be the simplest and most  
12 cost-effective way to resolve this matter, but that RUCO's modified Track & Monitor would also  
13 provide a simple and cost-effective resolution.

14           24.     On April 29, 2014, Green Earth Energy & Environmental, Inc. ("Green Earth"), which  
15 identified itself as a small renewable energy company, filed comments on the Seven Options. Green  
16 Earth stated that the integrity of RECs is vital to the solar market in Arizona and that not double  
17 counting them is crucial. Green Earth stated that it is registered with Western Renewable Energy  
18 Generation Information System ("WREGIS") to track the RECs generated by Green Earth's systems  
19 so that those RECs can be sold to markets outside of Arizona. Green Earth supported Least Cost  
20 RECs as the simplest solution for addressing REST compliance and asserted that it would be the  
21 easiest to establish, would provide a market-based solution, and would be a long-term solution  
22 without the need for Commission intervention. Green Earth urged the Commission seriously to  
23 consider adopting Least Cost RECs to provide a permanent solution to the REST compliance  
24 question.

25           25.     On April 29, 2014, the Renewable Energy Markets Association ("REMA"), which  
26 described itself as a non-profit association representing organizations that sell, purchase, or promote  
27  
28

1 renewable energy products in North America,<sup>21</sup> filed comments on the Seven Options. REMA stated  
2 that its members support policies that maintain consumers' freedom to buy and sell renewable energy  
3 voluntarily and that a market for renewable energy, including RECs, is "alive and well in Arizona."  
4 REMA characterized many of the Seven Options as jeopardizing the voluntary market by creating  
5 uncertainty about REC ownership, stating that "when there is a simultaneous ownership claim to a  
6 REC, the monetary, compliance, and environmental value of the REC becomes worthless." REMA  
7 asserted that the voluntary market provides an economic opportunity that will likely grow, as it has  
8 had an annual growth rate around 10 percent, and that Arizona home and business owners have  
9 benefited. REMA recommended that the Commission institute a REC marketplace that would allow  
10 eligible generators to sell their RECs to utilities that would use those RECs to demonstrate DG  
11 compliance, while avoiding double counting concerns. REMA asserted that both Track & Monitor  
12 and Track & Record would infringe on generators' property rights.

13         26.     Between April 29 and May 6, 2014, GCSECA, Mohave Electric Cooperative,  
14 Incorporated ("Mohave"), and the Rose Law Group pc filed requests related to the service list for this  
15 matter.

16         27.     On May 21, 2014, Commissioner Brenda Burns filed a letter to the parties and  
17 interested stakeholders for this matter, expressing appreciation for the proposals made thus far, but  
18 requesting that focus be maintained on the purpose for revising the REST rules: "[We] simply want  
19 to know how many renewable energy kilowatt-hours are being produced within our regulated  
20 utilities' service territories via distributed generation." Commissioner Burns stated that the  
21 Commission does not seek to deprive anyone of a right to own the attributes of a renewable energy  
22 product and, further, that she was unlikely to support either an option that would require ratepayers to  
23 pay subsidies to count existing renewable energy or an option that could be criticized or perceived as  
24 weakening the current REST goals. Additionally, Commissioner Burns stated that she believed only  
25 Track & Monitor or Track & Record were workable, although SEIA's criticism of Track & Monitor  
26 caused her concern that some would characterize Track & Monitor as a lowering of the REST

27

28 <sup>21</sup> REMA stated that the renewable energy products include RECs, retail green power programs, utility green pricing services, and on-site renewable energy solutions.

1 requirement. Commissioner Burns advocated for Track & Record as the best possible outcome for  
2 this matter, provided an appendix describing a modified Track & Record,<sup>22</sup> and asserted that the  
3 modified Track & Record would eliminate concerns about double counting of RECs while  
4 maintaining the REST and not requiring ratepayers to pay further subsidies. Commissioner Burns  
5 characterized the current REST rules as a “dead-end” and the waiver provision of the ROO as subject  
6 to manipulation and exploitation.

7       28. On May 28, 2014, Commissioner Gary Pierce filed a letter to the parties and interested  
8 stakeholders for this matter, expressing appreciation for Commissioner Brenda Burns’s letter of May  
9 21, 2014, and expressing reservations about the waiver approach from the Track & Record Docket  
10 ROO. Commissioner Pierce asserted that the average ratepayer would not understand the waiver  
11 approach and could easily perceive it as a decrease in the DG requirement. Commissioner Pierce  
12 further asserted that the method adopted by the Commission should be easy to understand, should not  
13 create doubt as to the Commission’s commitment to the 15-percent renewable goal or the DG carve-  
14 out, and should enable the Commission to ascertain how much renewable energy has been produced  
15 within affected utilities’ service areas. Commissioner Pierce expressed a desire to discuss at an Open  
16 Meeting the modified Track & Monitor proposal set forth by Commissioner Burns in her letter.

17       29. On June 20, 2014, Commissioner Robert Burns filed a letter to the parties and  
18 interested stakeholders for this matter, expressing appreciation for Staff’s work leading to the Seven  
19 Options filing, but stating that none of the Seven Options as included therein appeared likely to  
20 resolve all of the issues confronted in the Track & Record Docket ROO. Commissioner Burns stated

21  
22 <sup>22</sup> The modified Track & Record would require a utility to track, record, and report all renewable kWhs produced  
23 within its CC&N service area; would require the utility to distinguish in its reporting between those kWhs for which it  
24 owned the REC and those for which it did not; would have the reporting of kWhs associated with RECs not owned by the  
25 utility acknowledged; and would allow the Commission to consider all available information. Commissioner Burns stated  
26 that the REST rules would not be altered with respect to the overall 15-percent requirement or the 30-percent DG carve  
27 out, and that the double-counting issue would be resolved because reporting of the kWhs for which a utility did not own  
28 the REC would be acknowledged, and the rule would include a statement regarding the use/extinguishment of RECs. The  
modified Track & Record would involve having the following language, or something similar, added to the REST rules:

Any Renewable Energy Credit (REC) created by the production of renewable energy which the  
Affected Utility does not own shall be retained by the entity creating the REC. Such REC may not  
be considered used or extinguished by any Affected Utility without approval and proper  
documentation from the entity creating the REC, regardless of whether or not the Commission  
acknowledged the kWhs associated with non-utility owned RECs.

1 that Commissioner Brenda Burns's modified Track & Record language warranted further  
2 consideration by the Commission and could resolve the parties' concerns about double counting.  
3 Commissioner Burns further stated that the Commission needs to track all DG installed and that the  
4 modified Track & Record language would allow the Commission to acknowledge that information  
5 while avoiding waivers. Commissioner Burns also expressed a desire to discuss the various  
6 proposals at an Open Meeting.

7 30. On July 3, 2014, SEIA filed a letter responding to the modified Track & Record  
8 proposal from Commissioner Brenda Burns and supporting the proposal, with additional  
9 modifications that SEIA stated were necessary to clarify the intent of the rule change and remove any  
10 remaining confusion about the possibility of double counting RECs. SEIA's additional modifications  
11 were provided as two alternatives, one based on energy (kWhs) and one based on capacity (kW).  
12 SEIA's modifications clarified that neither kWhs associated with non-utility-owned RECs nor kW  
13 installed for which the utility will not own RECs would be counted toward the utility's REST  
14 compliance obligation, eliminated the concept of acknowledgment, and added that RECs created by  
15 the production of energy not owned by a utility shall not be considered owned by the utility without  
16 approval and documentation.

17 31. At its Staff Open Meeting on July 22, 2014, the Commission directed Staff to move  
18 forward with preparation of draft REST rules using the language set forth by Commissioner Brenda  
19 Burns in her letter filed May 21, 2014.

20 32. On August 1, 2014, RUCO filed comments regarding the relationship between this  
21 matter and the U.S. Environmental Protection Agency's ("EPA's") proposed Rule 111(d) regarding  
22 emissions reductions. RUCO expressed concern that the EPA requirements will be stringent and will  
23 revolve around RECs, creating the possibility for Arizona to be subjected to "steeper than necessary  
24 111(d) compliance targets" if the Commission's actions in this matter do not preserve REC integrity  
25 and establish a clear transaction to acquire RECs. RUCO strongly recommended that the  
26 Commission create a transaction through which a utility can gain RECs from willing solar adopters,  
27 emphasizing that REC accumulation should start as soon as possible. RUCO proposed two potential  
28 methods, with the first allowing DG adopters the choice of providing their RECs to the utility or

1 keeping their RECs and paying the utility a small charge to cover the cost for the utility to buy  
2 inexpensive unbundled RECs elsewhere, and the second using the lost fixed cost recovery (“LFCR”)  
3 net metering charge as the transaction mechanism and otherwise using the same general concept of  
4 customers paying to retain their RECs. RUCO stated that either option would likely maintain REC  
5 integrity for Rule 111(d) compliance because of the clear transaction for a customer’s RECs and no  
6 claim upon RECs not transferred to a utility. In the event the Commission were not to adopt one of  
7 RUCO’s proposed methods, however, RUCO suggested that specific language be included in the  
8 REST rules to give a future Commission flexibility in the event of Rule 111(d) implementation.<sup>23</sup>

9       33. On August 8, 2014, Staff filed a Memorandum and proposed Order that would  
10 authorize Staff to file a Notice of Proposed Rulemaking (“NPRM”) with the Office of the Secretary  
11 of State to commence formal rulemaking to adopt the language provided by Commissioner Brenda  
12 Burns.

13       34. Between August 11 and 19, 2014, TEP/UNSE, AECC, APS, Mohave, and Navopache  
14 Electric Cooperative, Inc. (“Navopache”) filed requests related to the service list for this matter.

15       35. On August 29, 2014, SEIA filed a response to Staff’s Memorandum and proposed  
16 Order, asserting that the proposed rules included therein contained ambiguous language that would  
17 jeopardize the three main objectives identified by both Commissioner Brenda Burns and Staff—(1)  
18 preserving the REST, (2) resolving double counting, and (3) avoiding new subsidies. SEIA identified  
19 the “core issue” as whether the Commission intends to allow “acknowledged kWhs” (that renewable  
20 energy for which the affected utility does not own the RECs) to effectively reduce an affected  
21 utility’s REST obligation. SEIA asserted that allowing this would cause the rulemaking to fail to  
22 meet the stated objectives. SEIA explained the ambiguities it saw in the proposed language and  
23 offered modifications intended to clarify the language and allow the rulemaking to meet all three  
24 stated objectives. Specifically, SEIA suggested the following:

25  
26 <sup>23</sup> RUCO’s language was as follows:

27       Affected utilities, upon approval of the Commission, may be authorized to use non-DG RECs  
28       (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-  
      DG RECs applied to the carve-out cannot exceed the number of RECs and/or kWhs produced by  
      customers who have not exchanged their RECs to the utility in their respective service territory.

1 a. That additional language be added to § 1805(G) explicitly stating that  
2 “acknowledged kWhs cannot be considered when evaluating REST compliance”;

3 b. That the language proposed to be added to § 1812(C), which would allow the  
4 Commission to “consider all available information,” be eliminated; and

5 c. That a portion of the language proposed to be added to § 1805(F)—specifically  
6 the phrase “regardless of whether or not the Commission acknowledged the kWhs associated  
7 with non-utility owned Renewable Energy Credits”—be eliminated.

8 SEIA stated that any acknowledgment of kWhs that lowers REST compliance could directly impact  
9 REC value regardless of the Commission’s intentions because it is REC certifiers who make that  
10 determination, and the Commission cannot control how REC certifiers treat the RECs. SEIA asserted  
11 that an alternative item of value to facilitate REC transfer, in lieu of direct subsidies, would need to  
12 be identified for the third objective to be met, and supported RUCO’s language filed on August 1,  
13 2014, as striking a good balance between the first and third objectives. SEIA further stated that the  
14 Commission’s choice—whether or not to allow acknowledged kWh to count toward REST  
15 compliance—will determine whether unsubsidized DG investment occurs in Arizona.

16 36. At the Commission’s Open Meeting held on September 9, 2014, the Commission  
17 approved the proposed Order directing Staff to file a NPRM with the Office of the Secretary of State  
18 no later than September 19, 2014, for publication in the *Arizona Administrative Register* no later than  
19 October 10, 2014. The Proposed Order directed the Commission’s Hearing Division to hold oral  
20 proceedings to receive public comment on the NPRM in Tucson on November 12, 2014, and in  
21 Phoenix on November 14, 2014.

22 37. On September 10, 2014, a Procedural Order was issued providing the specific times  
23 and locations for the November 12 and 14, 2014, oral proceedings.

24 38. On September 11, 2014, Staff filed a memorandum providing several additions to the  
25 service list for this matter.

26 39. On September 15, 2014, Decision No. 74753 was issued, adopting the proposed Order  
27 filed by Staff on August 8, 2014, with Commissioner Susan Bitter-Smith dissenting.

28 ...

1           40.     On September 19, 2014, the Commission's Legal Division filed copies of the Agency  
2 Certificate, Agency Receipt, Notice of Rulemaking Docket Opening ("NRDO"), and NPRM that had  
3 been filed with the Office of the Secretary of State that day.

4           41.     On October 10, 2014, the NRDO and NPRM were published in the *Arizona*  
5 *Administrative Register*. A copy of the NPRM is attached hereto and incorporated herein as Exhibit  
6 A.

7           42.     At the Commission's Staff Open Meeting on October 16, 2014, the procedural  
8 schedule for this matter was discussed concerning whether the Commission would be able to vote on  
9 final rules in this matter before the end of 2014.

10          43.     On November 3, 2014, Staff filed Staff's Comments ("11/3 Comments"), a copy of  
11 which is attached hereto and incorporated herein as Exhibit B. In the 11/3 Comments, Staff provided  
12 background information related to this matter, described additions and modifications to the rule  
13 language to clarify the NPRM's intent, included an Exhibit A showing the NPRM rule language as  
14 revised by the additions and modifications, and "recommend[ed] that the Commission enact the  
15 NPRM as a final rule, with the clarifying additions and modifications set forth in Exhibit A [to the  
16 11/3 Comments]." Staff stated that the NPRM's intent was "to clearly establish the means by which  
17 the Commission will measure utility compliance under the REST rules" and to "eliminate the specter  
18 of double-counting," as demonstrated by the NPRM's focus on retention of RECs by their owners  
19 and differentiation between energy for which RECs are owned by an affected utility and energy for  
20 which RECs are owned by others. Staff stated that although some have implied that the use of the  
21 word "acknowledge" in the NPRM obscured the Commission's intent for RECs to remain with their  
22 owners unless specifically transferred, this argument ignores the context provided by the rest of the  
23 proposed language in the NPRM, which Staff believes made it "absolutely clear that double counting  
24 is not intended." Staff pointed out that the NPRM's Preamble explicitly provided that  
25 "acknowledged" means that non-utility-owned RECs will be reported "for informational purposes  
26 only."<sup>24</sup> To provide additional clarification, however, Staff suggested the following additions and  
27

28 <sup>24</sup> Exhibit A, 20 A.A.R. 2750-51, item 8(1) and (4)(B).

1 modifications to the NPRM's proposed rule language:

2 a. Add language at the end of § 1805(G) to clarify that kWhs associated with  
3 non-utility-owned RECs are reported for information purposes and are not eligible to be used  
4 for compliance with the REST standards;

5 b. Add language in § 1805(F) to clarify that the Commission acknowledges the  
6 reporting of kWhs associated with non-utility-owned RECs; and

7 c. Delete the word "compliance" in three places in § 1812—the title heading, the  
8 first sentence of § 1812(B), and the end of § 1812(C)—"to clarify . . . that the non-utility  
9 owned RECs (or kWhs) will be reported for informational purposes only and will not be used  
10 to determine compliance with the REST Rules."<sup>25</sup>

11 Staff stated that adoption of the NPRM as a final rule with these slight clarifying changes "would  
12 eliminate any potential for allegations of ambiguity . . . [and] should completely eliminate any  
13 question about the Commission's intent."<sup>26</sup> Staff further asserted that, under A.R.S. § 41-1025, these  
14 minor changes would not render the rules "substantially different" than the rules as published in the  
15 NPRM, because the changes only clarify the rules to better reflect the Commission's intent, which  
16 had been clearly stated in the NPRM's Preamble. Staff asserted that interested persons already  
17 received notice through the NPRM because the newly suggested revisions merely clarify the rule  
18 language without changing the extent, subject matter, issues involved in, or effects of the rules from  
19 what was included in the NPRM. Staff concluded that because the suggested revisions would not  
20 make the rules substantially different from those published in the NPRM, the clarifying changes  
21 could be made without delaying the rulemaking process. The text of the rules with Staff's suggested  
22 revisions was attached to the 11/3 Comments and is set forth in Exhibit B hereto.

23 44. On November 10, 2014, Vote Solar, DOD/FEA, RUCO, TEP/UNSE, SEIA, APS, and  
24 TASC filed initial written comments on the NPRM, with most also addressing the 11/3 Comments.

25 45. On November 12, 2014, an oral proceeding was held before two duly authorized  
26 Administrative Law Judges ("ALJs") of the Commission, at the Commission's offices in Tucson,

27 \_\_\_\_\_  
28 <sup>25</sup> Exhibit B, 11/3 Comments at 6.

<sup>26</sup> *Id.*

1 Arizona. Staff provided an explanatory statement regarding the rulemaking and responded to a  
2 number of questions from the ALJs. Oral comments were provided by Robert Bulechek, Energy  
3 Efficiency Consultant and Chair of the Tucson-Pima Metropolitan Energy Commission<sup>27</sup>; Tucson  
4 Mayor Jonathan Rothschild, through a statement read by Ryan Anderson, the Mayor's Planning,  
5 Sustainability, and Transportation Advisor; Bruce Plenk, Solar Consultant and TEP Customer; and  
6 Terry Finefrock, Ratepayer and TEP Customer. Mr. Anderson also provided a written copy of the  
7 statement that he read on behalf of Mayor Rothschild. These comments are summarized, and  
8 Commission responses to them are provided, in Exhibit E hereto. During the oral proceeding, Staff  
9 was asked to respond to specific alternate rule language and indicated a preference to see the  
10 language in writing before providing a response. It was determined that the alternate rule language  
11 would be docketed and that Staff would provide its responses at the second oral proceeding.  
12 Additionally, when Staff was asked whether CRS had indicated its position on the 11/3 Comments,  
13 Staff stated that it had received an email from CRS and would request CRS's consent to file the email  
14 in the docket for this matter.

15 46. On November 13, 2014, a Procedural Order was issued providing the alternate rule  
16 language for Staff's review.

17 47. On November 13, 2014, Staff filed a copy of a November 10, 2014, email sent to Staff  
18 and the Legal Division by Robin Quarrier, CRS Chief Counsel, in which CRS provided its response  
19 to the suggested language changes set forth in the 11/3 Comments. CRS stated that the language  
20 changes in the 11/3 Comments appear to result in a policy that would not lead to double counting, but  
21 also indicated that its position would change in the event of future Commission statements or actions  
22 inconsistent with a policy that kWhs associated with non-utility-owned RECs cannot be used for  
23 compliance with the REST rules. A copy of the CRS email is attached hereto and incorporated  
24 herein as Exhibit C.

25 48. On November 14, 2014, a second oral proceeding was held at the Commission's  
26 offices in Phoenix, with two ALJs presiding and Commissioner Brenda Burns attending. Staff

27

28 <sup>27</sup> The Tucson-Pima Metropolitan Energy Commission is an Advisory Commission to the Tucson City Council and the Pima County Board of Supervisors. (Tr. I at 40.)

1 provided an explanatory statement regarding the rulemaking; provided responses to the alternate rule  
2 language included in the Procedural Order of November 13, 2014; and responded to a few additional  
3 questions from Commissioner Brenda Burns and the ALJs. Oral comments were provided by ASDA,  
4 APS, and RUCO.

5 49. On November 14, 2014, responsive comments were filed by APS, TASC, ASDA, Mr.  
6 Finefrock, and RUCO.

7 50. On November 14, 2014, Staff also filed responsive comments, recommending that the  
8 Commission adopt the rule revisions either as published in the NPRM or, to the extent additional  
9 clarification is desired, with the modifications set forth in the 11/3 Comments.

10 51. On November 18, 2014, comments were filed by Hieu Tran and Carolyn Allen.

11 52. On November 20, 2014, Staff filed a Staff Report summarizing the oral and written  
12 comments received October 10 through November 14, 2014, and providing Staff's responses to those  
13 comments. In the Staff Report, Staff also indicated that it had no changes to the Preliminary  
14 Summary Economic, Small Business, and Consumer Impact Statement published in the Preamble to  
15 the NPRM. Consequently, Staff is recommending that this Preliminary Summary be adopted as the  
16 Economic, Small Business, and Consumer Impact Statement ("EIS") for this rulemaking. The Staff  
17 Report is attached hereto and incorporated herein as Exhibit D.

#### 18 **Description of the Rule Changes**

19 53. As published in the NPRM, the proposed rules would do the following:

20 a. Create a new § 1805(F) stating that a REC created by production of renewable  
21 energy not owned by an affected utility is owned by the entity creating the REC and that an  
22 affected utility cannot use or extinguish such a REC without the entity's approval and  
23 documentation from the entity, even if the Commission "acknowledges" the kWhs associated  
24 with the REC;

25 b. Create a new § 1805(G) announcing that the reporting of kWhs associated with  
26 non-utility-owned RECs "will be acknowledged";

27 c. Amend § 1812(A) to expand the scope of the information to be reported  
28 annually by a utility to include "other relevant information";

1           d. Amend § 1812(B)(1) to expand the specific information to be reported  
2 annually by a utility to include kWhs of energy produced within its service territory for which  
3 the affected utility does not own the associated RECs, which must be differentiated from the  
4 kWhs of energy for which the affected utility does own the RECs; and

5           e. Amend § 1812(C) to allow the Commission to “consider all available  
6 information” to determine whether an affected utility’s compliance report satisfies the REST  
7 rules.

8           54. With the changes set forth in the 11/3 Comments, the proposed rules would do the  
9 following (modifications in bold):

10           a. Create a new § 1805(F) stating that a REC created by production of renewable  
11 energy not owned by an affected utility is owned by the entity creating the REC and that an  
12 affected utility cannot use or extinguish such a REC without the entity’s approval and  
13 documentation from the entity, even if the Commission “acknowledges” **the reporting of the**  
14 kWhs associated with the REC;

15           b. Create a new § 1805(G) announcing that the reporting of kWhs associated with  
16 non-utility-owned RECs “will be acknowledged” **for reporting purposes, but will not be**  
17 **eligible for compliance with § 1804 and § 1805;**

18           c. **Eliminate the word “Compliance” from the title to § 1812;**

19           d. Amend § 1812(A) to expand the scope of the information to be reported  
20 annually by a utility to include “other relevant information”;

21           e. **Eliminate the word “compliance” from the introductory language in §**  
22 **1812(B);**

23           f. Amend § 1812(B)(1) to expand the specific information to be reported  
24 annually by a utility to include kWhs of energy produced within its service territory for which  
25 the affected utility does not own the associated RECs, which must be differentiated from the  
26 kWhs of energy for which the affected utility does own the RECs; and

27 ...  
28 ...

1           g. Amend § 1812(C) to allow the Commission to “consider all available  
2 information” to determine whether an affected utility’s **compliance** report satisfies the REST  
3 rules.

#### 4 Reasons for the Rulemaking

5           55. In her letter of May 21, 2014, Commissioner Brenda Burns emphasized that the  
6 purpose for revising the REST rules was to allow the Commission to know how many renewable  
7 energy kWhs are being produced within affected utilities’ service territories through DG, without  
8 depriving anyone of a right to own the attributes of a renewable energy product and without  
9 weakening, or even being perceived as weakening, the existing REST goals.

10           56. The NPRM Preamble stated that the proposed rule changes would clarify and update  
11 how the Commission deals with renewable energy compliance and related RECs and would address  
12 how utilities that are no longer offering DE incentives in exchange for DE RECs would demonstrate  
13 compliance with the DE portion of the REST rules. According to the NPRM Preamble, it is  
14 “necessary for the Commission to provide a new framework for considering compliance with the  
15 rules” when incentives are not paid, and the proposed rule changes will accomplish this “by noting  
16 that the Commission may consider all available information[, including] measures such as market  
17 installations, historical and projected production and capacity levels in each segment of the DE  
18 market[,] and other indicators of market sufficiency activity.” The NPRM Preamble pointed out that  
19 utilities will also be required to report renewable production from facilities installed in the utilities’  
20 service territories without an incentive and for which the RECs are not transferred to the utilities and  
21 that *“these non-utility owned RECs will be acknowledged for informational purposes by the*  
22 *Commission . . . [to] protect the value of RECs and avoid the issue of double counting.”*<sup>28</sup> The  
23 NPRM Preamble also stated the following, in reference to the affected utilities’ new reporting of non-  
24 incentivized DE production within their service territories: *“This reporting is intended to be for*  
25 *informational purposes only.”*<sup>29</sup>

26 . . .

27 \_\_\_\_\_  
28 <sup>28</sup> NPRM Preamble item 8(1), 20 A.A.R. 2750 (emphasis added).

<sup>29</sup> NPRM Preamble item 8(4)(B), 20 A.A.R. 2751 (emphasis added).

1           57. In spite of the NPRM Preamble language indicating that non-utility owned RECs  
2 would be acknowledged for informational purposes (*i.e.*, not for compliance purposes), some  
3 commenters expressed concern that the NPRM proposed rules, especially in their use of  
4 “acknowledged,” were vague and potentially a threat to REC integrity. Commenters expressed  
5 concern that acknowledgment would be linked to compliance and would result in double counting of  
6 RECs not owned by affected utilities, which some asserted would be a taking of the value of those  
7 RECs from their owners. In response to the comments criticizing the NPRM language as vague and  
8 potentially damaging to REC integrity and value, Staff filed its 11/3 Comments to clarify further the  
9 meaning and intent behind the NPRM language. In the 11/3 Comments, Staff eliminated references  
10 to “compliance” reporting and clarified that the kWhs associated with RECs not owned by a utility,  
11 although reported by a utility, would not be eligible to be used for compliance with the REST rules.  
12 Staff asserted that the suggested changes in the 11/3 Comments are intended only to clarify the  
13 proposed rule language to reflect what was included in the Preamble. Staff does not believe that the  
14 rule language revisions suggested in the 11/3 Comments change the benefits and burdens of the  
15 rulemaking as proposed in the NPRM and does not believe that those suggested revisions constitute a  
16 substantive change.

17 **Additional Information from Staff & the Legal Division**

18           58. At the oral proceedings for this matter, Staff provided the following additional  
19 information related to the REST rules, the renewable energy market, and the rulemaking:

20           a. Staff notified stakeholders of the proposed changes to be included in the  
21 NPRM through an August 8, 2014, memorandum that was sent to a wide variety of potentially  
22 interested parties using the service list in this docket, the service list in the Track & Record  
23 Docket, a list of all affected utilities not included in those service lists, and the Executive  
24 Secretary’s office “blast list” of persons who might be interested in Commission proceedings.  
25 (Tr. I at 6-7.)

26           b. Staff believes that the rule language as proposed in the NPRM was clear and  
27 offered the 11/3 Comments as an effort to provide some additional clarification in response to  
28 some filings that have been made in the docket. (Tr. II at 6.)

1           c.       The Tucson DG market has taken off in recent months like it never has before,  
2 and the utilities are not receiving those RECs. (Tr. I at 8.)

3           d.       The rule revisions will provide the Commission and the public the benefit of  
4 knowing about all Arizona renewable energy market activity, even though the non-utility-  
5 owned RECs are not to be used in any way toward compliance. (Tr. I at 8-9.) It is in the  
6 public interest to have clarity regarding who owns RECs and for double counting to be  
7 avoided. (*Id.*) The utilities will benefit from the clarity provided regarding how to pursue  
8 compliance going forward “through, for example, waiver requests” and with “market-based  
9 information that could be considered by the Commission that would not be tied to those  
10 nonutility-owned RECs that aren’t being counted.” (Tr. I at 9.)

11          e.       The REST rules allow for RECs to be obtained on a utility-scale level through  
12 purchase power agreements, such as the one through which TEP obtains both power and  
13 RECs from a 50 MW wind farm in New Mexico. (Tr. I at 21.)

14          f.       There is currently nothing to prohibit a utility from owning residential DG,  
15 although Staff understands § 1805(D) to prohibit a utility from owning commercial DG. (Tr.  
16 II at 8-9.) TEP has received a waiver from this prohibition in order to implement its Bright  
17 Roofs program, which is for non-residential DG. (Tr. II at 9.)

18          g.       If a utility desires to use REST funding to implement renewable energy  
19 programs or to build or obtain renewable energy facilities, the utility must first obtain  
20 Commission approval. (Tr. I at 14-16.) If a utility intends to invest its own money to pursue  
21 renewable energy facilities, it is not required to obtain prior Commission approval before  
22 doing so. (*Id.*) The utility would then request rate treatment for such an investment in its next  
23 rate case. (*Id.*)

24          h.       There is currently nothing to prohibit a utility from purchasing DG RECs from  
25 REC owners. (Tr. I at 15.) However, according to Staff, since the Track & Record Docket,  
26 “the Commissioners have expressed a strong desire to not see ratepayer funds spent when  
27 there’s distributed generation that’s being installed without an incentive.” (Tr. I at 15.) Staff  
28 stated that buying the RECs would be just like paying incentives for the RECs and that,

1 because “the market is going gangbusters, . . . there’s . . . a strong argument that it doesn’t  
2 make sense to spend a lot of ratepayer money buying RECs when the market is taking off  
3 without needing to spend that money.” (Tr. I at 15.) Staff conceded, however, that the funds  
4 used for an investment initiated by a utility without prior Commission authorization are not  
5 actually ratepayer money, not until recovery for the investment is being provided through  
6 ratemaking. (Tr. I at 16.)

7 i. The pending APS and TEP 2015 REST Implementation Plans, which propose  
8 to allow the utilities to establish utility-owned DG systems for residential premises, should be  
9 considered at an Open Meeting in the near future, at which time the Commission will provide  
10 guidance on utility-owned DG. (Tr. I at 12.)

11 j. The Commission approves a utility’s REST Implementation Plan for each year,  
12 typically with some amendments. (Tr. I at 16.)

13 k. The Commission historically has not made determinations regarding whether a  
14 utility’s operations for a specific year did or did not result in the utility’s compliance with the  
15 REST rules requirements. (Tr. I at 16-17.). The Commission could make that determination,  
16 although the REST rules do not require it to do so. (*Id.*) The Commission is authorized by  
17 the REST rules to sanction utilities for failure to reach compliance. (*Id.*)

18 l. The Commission historically has not made determinations regarding whether a  
19 utility’s operations for a specific year have or have not resulted in the utility’s compliance  
20 with its Commission-approved REST Implementation Plan. (Tr. I at 17.)

21 m. The Commission receives counts of RECs acquired by utilities in their annual  
22 reports filed under the REST rules each April, but the Commission does not keep a count of  
23 RECs, and Staff did not recall any Commission order ever saying X utility has this many  
24 RECs. (Tr. I at 17-18.)

25 n. Utilities’ “compliance reports” are filed by the utilities in April and are looked  
26 at by Staff, but there is not a formal processing requirement for them, such as a requirement  
27 that Staff must make a recommendation for consideration at an Open Meeting. (Tr. I at 34.)  
28 The compliance reports are primarily used during the review of the REST Implementation

1 Plans that are filed by the utilities in July. (Tr. I at 34.)

2 o. There are two REC markets—the compliance market and the voluntary  
3 market—and Arizona’s primary market has been the compliance market because of the REST  
4 rules. (Tr. I at 24.)

5 p. For Commission purposes, RECs in Arizona were created when the REST  
6 rules were created, to serve as a vehicle for compliance with the rules, although some would  
7 say that the national renewable energy market would have recognized that someone put in  
8 renewable energy installation in Arizona and that there was a REC related to that. (Tr. I at  
9 19.) When people discuss Arizona RECs, they are generally talking about compliance with  
10 the REST rules. (Tr. I at 18.)

11 q. Although not every jurisdiction uses the same unit to measure a REC (kWh  
12 versus MWh, for example), the general idea is that RECs capture the renewable and  
13 environmental characteristics of the renewable energy produced. (Tr. I at 19-21.) The RECs’  
14 purpose is to recognize the value of renewable energy beyond the electrons flowing through  
15 the power lines, the value of a renewable energy electron over an electron from a coal plant or  
16 a natural gas plant. (Tr. I at 21.)

17 r. While Staff is very involved in examining EPA Rule 111(d) and its  
18 implications, Staff considers it premature to consider whether Rule 111(d) should impact the  
19 Commission’s decision concerning whether and how to go forward with this rulemaking. (Tr.  
20 I at 24.) Staff believes that the interaction between the proposed EPA rules and the REST  
21 rules is something that will need to be considered down the road, but the EPA rules are not yet  
22 finalized. (Tr. II at 35.)

23 s. The term “acknowledge,” as used in the proposed rules, is meant to be  
24 understood consistent with a standard dictionary definition of the term—to accept or not to  
25 deny the truth or existence of something. (Tr. I at 26.) In other words, it is intended to denote  
26 a recognition that something exists. (Tr. I at 26.) The addition of the language regarding  
27 acknowledgment in the 11/3 Comments was not intended to change what the Commission  
28 considers (from the kWhs themselves to the reporting of the kWhs), just to make it clear that

1 the Commission is not considering the information for compliance purposes. (Tr. I at 26-27.)  
2 Staff stated that there is not a problem with noting the amount of kWhs as long as the  
3 Commission is not using the information for compliance purposes. (Tr. I at 27.)

4 t. Staff does not believe that the Commission would be prevented from  
5 acknowledging the existence of renewable energy in Arizona in any given utility's service  
6 territory if this rulemaking were not completed, as the Commission could insert a line in  
7 REST Implementation Plan orders, for example, saying that it acknowledged the non-utility  
8 owned generation. (Tr. I at 69.)

9 u. While the rulemaking initially was being pursued to address the issue of  
10 compliance, and that is still part of the discussion, a major issue that arose during the process  
11 was the interest many parties have in protecting the value of the RECs. (Tr. II at 5.) Also, the  
12 Commission expressed a strong interest in knowing what is happening in the market, as to  
13 both installations for which the utilities get the RECs and installations for which they do not.  
14 (Tr. II at 5.)

15 v. The purpose of § 1812(B)(1) is to create a new reporting requirement that  
16 includes reporting of both production from the facilities for which a utility owns the RECs  
17 and from the facilities for which the utility does not own the RECs, to meet the Commission's  
18 stated interest in knowing about everything that is out there. (Tr. I at 33-34.)

19 w. Once a REC has been used by an affected utility for purposes of compliance, it  
20 can no longer be used for purposes of compliance. (Tr. I at 38.) Staff believes that the  
21 reporting of energy by an affected utility, when the affected utility does not own the REC  
22 from the energy, has no effect on the usability of the REC or the energy. (Tr. I at 38.) One of  
23 the things Staff was trying to clarify in the 11/3 Comments was that if the utility has not paid  
24 an incentive and thus has not acquired a REC, the person who owns the REC should be able  
25 to use the REC in whatever manner they choose. (Tr. I at 38.) The reporting and  
26 acknowledgment contemplated in this rulemaking are not intended to impinge upon the value  
27 of RECs that do not belong to an affected utility. (Tr. I at 38-39.) Thus, those RECs that do  
28 not belong to an affected utility are not being used toward compliance. (Tr. I at 39.)

1           x.       Staff does not consider § 1805(G) to create a requirement on the Commission  
2 or any other entity. (Tr. I at 28.) When asked whether it serves any purpose, Mr. Gray stated  
3 that he thinks it helps to protect the value of RECs by indicating that the RECs are not being  
4 counted for compliance, that the production that is occurring is being noted but not counted.  
5 (Tr. I at 28-29.)

6           y.       Staff does not believe that the rule revisions will result in any significant  
7 burdens. (Tr. II at 6.) The utilities will report more information, but it is information that  
8 they generally already have because of the production meters already in place. (Tr. II at 6.)  
9 The benefits will be additional clarity concerning compliance, additional protections for the  
10 integrity of RECs, and additional information to the Commission that will provide a more  
11 complete view of what is happening in the Arizona renewable energy market. (Tr. II at 6-7.)

12           z.       In response to concerns raised by APS about how utilities are to demonstrate  
13 compliance if the 11/3 Comments are adopted, Mr. Gray stated that Staff considers the 11/3  
14 Comments to be clarifying in nature and that there has not been “a connection broken with  
15 how a utility could reach compliance.” (Tr. II at 20.) Mr. Gray stated:

16                   And I think some of it is there's some nuance to this, but under the REST  
17 rules, the only way to demonstrate compliance, as the REST rules are  
18 written, is with RECs. So, but with, for example, the statement in the  
19 rules about the Commission considering all available information, there's  
20 – the Commission could find that the utilities are not out of compliance,  
21 which is subtly different than that the utilities are in compliance. Because,  
22 again, the REST rules, as written, require RECs for compliance. So if a  
23 utility needed 10 percent and they had 8 percent, and they didn't make up  
24 that other 2 percent with RECs, they wouldn't be found in compliance, but  
25 the Commission could consider market activity, whatever other available  
26 information they choose to consider, and decide, you know, hey, like right  
27 now the market's going gangbusters, so we're going to find them not out  
28 of compliance.<sup>30</sup>

24 Mr. Gray acknowledged that, from Staff's perspective, a finding that a utility is “not out of  
25 compliance” is no different than providing the utility an explicit waiver of compliance. (Tr. II  
26 at 28.)

27           aa.       When asked whether Staff prefers and recommends the adoption of the

28 <sup>30</sup> Tr. II at 20-21.

1 language of the NPRM as opposed to the 11/3 Comments language, Mr. Gray stated that Staff  
2 supports the language as filed. (Tr. II at 28.) Staff also thinks that the 11/3 Comments  
3 wording is helpful, if the Commission believes it is necessary. (Tr. II at 28.) Staff thinks that  
4 either version of the language is good and would support either one. (Tr. II at 28-29.) From  
5 Staff's perspective, the 11/3 Comments revisions were intended just to be clarifying changes,  
6 as Staff believes the language in the NPRM accomplished the same thing. (Tr. II at 21.) Staff  
7 suggested the changes in the 11/3 Comments, in response to concerns that had been raised, to  
8 ensure that everyone understood that non-utility owned RECs could not be counted or used to  
9 determine compliance, just as they cannot be used currently to determine compliance. (Tr. II  
10 at 22.) Staff felt that taking the term "compliance" out would make it clearer to affected  
11 utilities that "while the Commission can look at all information, it cannot rely on nonutility-  
12 owned RECs for compliance purposes." Staff does not believe that the suggested changes in  
13 the 11/3 Comments modify the Commission's ability to look at market sufficiency  
14 information, market installations, capacity levels, production level data, and other information  
15 along those lines. (Tr. II at 22-23.) That would all still fall within "all available information."  
16 (Tr. II at 22-23.) Staff believes that the clarifying changes in the 11/3 Comments do not  
17 change anything, but hoped that they could address the concerns that had been raised while  
18 still remaining true to the proposed rules as published in the NPRM. (Tr. II at 23.)

19 bb. Regarding the CRS email, Mr. Gray stated that CRS always provides a caveat  
20 in its responses concerning the possibility that the manner in which something is  
21 implemented, or even something that someone says, could be seen by CRS as an issue. (Tr.  
22 II at 21.) Mr. Gray said that he considered CRS's caveats to be standard, and he does not  
23 believe those caveats mean CRS does not see value in the 11/3 Comments. (Tr. II at 21.)

24 59. The Commission's Legal Division believes that there likely is a property interest in a  
25 REC in light of the REST rules and the fact that a property interest can be either tangible or  
26 intangible. (Tr. I at 22.)

27 60. APS has acknowledged that RECs have value in other forums. (Tr. II at 25.)

28 61. At the November 12, 2014, oral proceeding, the Legal Division stated that the record

1 would need to be developed more fully to make a complete analysis of whether there is a property  
 2 interest in RECs that would be protected under the Fifth Amendment Takings Clause, which provides  
 3 that private property shall not be taken for public use without just compensation. (Tr. I at 22-23.)  
 4 The purpose of the Takings Clause is to prevent the government from forcing some people alone to  
 5 bear public burdens that should, in fairness and justice, be borne by the public as a whole. (Tr. II at  
 6 9-10.) Staff does not believe that the proposed rule revisions raise a takings claim, although a  
 7 potential takings argument could arise if the proposed rule revisions were deemed to be double  
 8 counting. (Tr. II at 10.)

9         62. Through the Legal Division, Staff provided the following explanation for why the  
 10 proposed rules would not result in double counting:

11                 The provisions of the existing REST rules, and I'll refer you to R14-2-  
 12 1803(C), already recognize that nonutility RECs belong to the entity that  
 generates the kWh from a qualifying renewable resource.

13                 These rules state that the REC remains with the renewable energy  
 14 generator until it is specifically transferred. The Commission's rules,  
 therefore, in effect already protect the RECs held by nonutilities.  
 15 Administrative agencies such as the Commission are required to follow  
 their own rules. Absent a repeal of these provisions, a requirement to  
 16 count nonutility-owned RECs for utility compliance purposes would likely  
 be inconsistent with the REST rules.

17                 Thus, the amendment proposed to the rules must be read in the  
 context of the rules as a whole. When read as a whole, the proposed  
 18 modifications to the rules are not vague. Nonutility-owned RECs cannot  
 be used for compliance purposes. The term acknowledge must be read in  
 19 this context.

20                 Moving on to Staff's clarifying language, that was intended to  
 make the intent of the proposed changes even more clear. SEIA had  
 21 originally stated that it believed that the proposed rule changes were  
 ambiguous. While Staff does not believe that to be the case, many parties  
 22 that filed comments on Staff's minor clarifying changes believed that the  
 amendments may be helpful. But, again, Staff believes that the original  
 23 proposed changes to the rules and Staff's clarifying amendments do the  
 same thing.

24                 Finally, no one has raised a taking claim in the rulemaking case,  
 25 that I am aware of.<sup>31</sup> The proposals and the record in this case simply do  
 not support a takings claim or a double counting claim. Further, the court  
 26

27  
 28 <sup>31</sup> We note that the issue of whether the NPRM would result in a regulatory taking under the Fifth Amendment Takings Clause was raised by commenters, as is described herein.

1 cases, and I'm referring to U.S. Supreme Court cases, recognize that  
2 taking analyses are a very fact-specific assessment.

3 At the Tucson public comment session, Staff was asked about  
4 using the record in the track and record case to analyze a takings claim.  
5 While we believe that the record in that case does contain some helpful  
6 information, when looking at this issue, it may not be very helpful for  
7 purposes of analyzing the rule changes at issue in this case, because they  
8 are different from the proposals that were examined in the track and record  
9 case.<sup>32</sup>

## 6 **Public Comments**

7 63. The Commission received formal comments in this matter in writing and at two oral  
8 proceedings. Comments were received addressing both the rules as proposed in the NPRM and the  
9 suggested modifications to those proposed rules set forth in the 11/3 Comments.

10 64. The Staff Report including Staff's summary of the comments received, with Staff's  
11 responses thereto, is attached hereto and has been incorporated herein as Exhibit D. Staff does not  
12 recommend any modifications to the rules in addition to those included in the NPRM and the  
13 suggested modifications in Exhibit B.

14 65. Most of the public commenters have raised concerns that the NPRM language would  
15 damage the integrity and value of RECs and result in claims of double counting and potentially  
16 claims of regulatory taking under the Fifth Amendment Takings Clause. Most of the public  
17 commenters also have now expressed support for the modifications suggested in the 11/3 Comments.  
18 Specifically, Vote Solar found the NPRM language to be vague regarding whether non-utility owned  
19 RECs would be used for REST compliance and objected to such use as a devaluation of RECs that  
20 could easily be construed as a regulatory taking. Vote Solar stated that the modifications in the 11/3  
21 Comments would resolve its concerns. DOD/FEA asserted that the NPRM language would  
22 effectively destroy REC integrity in Arizona, would render the RECs associated with energy  
23 produced at DOD/FEA's Arizona facilities worthless for use toward federal compliance  
24 requirements, and would result in double counting and a deprivation of customer property without  
25 just compensation. DOD/FEA suggested that the modifications of the 11/3 Comments would be  
26 sufficient to address its concerns, provided that CRS agreed that the modifications would not result in  
27

28 <sup>32</sup> Tr. II at 10-12 (footnote added).

1 double counting. SEIA and TASC both expressed concerns regarding REC integrity/double counting  
2 of RECs prior to the NPRM, and both have now expressed support for the modifications in the 11/3  
3 Comments. RUCO raised concerns about REC integrity and double counting prior to the NPRM and  
4 suggested that the NPRM language would result in an annual debate over the meaning and  
5 significance of Commission acknowledgment. RUCO stated that the modifications in the 11/3  
6 Comments would reduce debate over the meaning and consequences of the rules and eliminate  
7 double counting. Mayor Rothschild asserted that the NPRM would expose the Commission to  
8 regulatory takings litigation because property rights inherent in RECs would lose value. Mr.  
9 Anderson, the Mayor's Policy Advisor, asserted that the 11/3 Comments appear to address the  
10 Mayor's concerns. Mr. Plenk asserted that the NPRM language could create a double counting  
11 problem, which the 11/3 Comments would go a long way to eliminate, although he also stated that  
12 the Commission should get CRS's view on whether the problem would be resolved. Mr. Bulechek  
13 stated that allowing utilities to count non-utility owned RECs for regulatory purposes would be a  
14 taking of their value without just compensation, but that informational reporting alone (such as  
15 through the modifications in the 11/3 Comments) would be acceptable as long as the utility received  
16 no value. Mr. Finefrock suggested that the NPRM would result in legal action such as a proceeding  
17 involving the Vermont Public Utility Commission and would risk litigation and Commission liability  
18 for damages because RECs are property and the NPRM would make them ineligible for use/sale. Mr.  
19 Finefrock did not specifically address the 11/3 Comments. Finally, CRS, which had expressed  
20 concern about double counting prior to the NPRM, asserted in the email to Staff/Legal attached  
21 hereto as Exhibit C that the 11/3 Comments modifications would not result in double counting and  
22 would not render RECs ineligible for certification, provided that the Commission implements the  
23 rules consistent with those modifications.

24         66. Given the extensive public comments from entities that would be impacted, if the  
25 Commission adopts the NPRM language without the modifications suggested in the 11/3 Comments,  
26 the Commission risks litigation and potentially liability for damages if the courts determine that the  
27 NPRM language or its implementation results in a regulatory taking. Such liability would impose  
28 costs upon Arizona taxpayers, in the form of the Commission's legal and administrative expenses

1 related to such litigation, any damages imposed upon the Commission as a result of such litigation,  
 2 and the expenses of any state court involved in such litigation. While the issue would appear to be  
 3 one of first impression in Arizona, there is persuasive authority for the position that RECs are  
 4 property.<sup>33</sup> The REST rules themselves support the idea that RECs would be considered property  
 5 under Arizona law, as § 1803(C), (D), and (E) discuss ownership, transfer, acquisition, and contracts  
 6 for the purchase or sale of RECs, and § 1803(E) expressly differentiates between the transfer of rights  
 7 concerning energy and the transfer of rights concerning RECs. In addition, § 1804(E) discusses  
 8 environmental attributes associated with kWhs as an equivalent for RECs, in the context of the RECs  
 9 associated with kWhs being used up, essentially, if a utility first trades or sells any of the  
 10 environmental attribute associated with the kWhs. Further, § 1804(G) discusses Commission  
 11 preapproval of agreements to purchase either energy or RECs. Thus, the Commission's own rules  
 12 treat RECs as property with value independent from the value of the kWhs of energy with which they  
 13 are associated.

14 67. APS is the only commenter that has expressed opposition to the modifications in the  
 15 11/3 Comments, based on the assertion that the 11/3 Comments "stripped away alternative means for  
 16 . . . demonstrating compliance by eliminating the nexus between compliance and the Commissioners'  
 17 consideration of all available information . . . like market installations and historical and projected  
 18 production and capacity levels." (Tr. II at 17.) APS has also asserted that the modifications in the

19  
 20 <sup>33</sup> See, e.g., *Wheelabrator Lisbon, Inc. v. Department of Public Utility Control*, 931 A.2d 159 (Conn. 2007); *Minnesota*  
 21 *Methane, LLC v. Department of Public Utility Control*, 931 A.2d 177 (Conn. 2007). Both of these cases concerned the  
 22 ownership of RECs associated with electrical output purchased by utilities subject to pre-existing purchase agreements  
 23 that did not address RECs. The Connecticut Supreme Court held that the Department had jurisdiction to determine  
 24 ownership of the RECs, that there was substantial evidence to support the Department's determinations that the RECs  
 25 were owned by the utilities, and that the Department's decision that the utilities were entitled to the RECs did not  
 26 constitute unconstitutional takings. The long-term purchase agreements in question, created in the 1990s, required the  
 27 utilities to purchase all of the electricity produced by the plaintiffs' facilities and had been approved by the Department  
 28 under Connecticut's statutory and regulatory scheme specifically due to the renewable nature of the electricity produced.  
 RECs were not recognized in Connecticut until 2002 and thus were not separately addressed in those purchase  
 agreements. The Department concluded that the RECs were inextricable from the electricity purchased under the  
 purchase agreements because the electricity would not have been eligible for the long-term purchase agreements in the  
 absence of its renewable attributes. The Connecticut Supreme Court deferred to the Department's expertise in  
 interpreting the applicable regulations and statutes. The court noted that other states had addressed the issue of initial  
 ownership of RECs for existing contracts that did not anticipate the creation of RECs, with Colorado, Maine, Minnesota,  
 North Dakota, New Jersey, New Mexico, Nevada, Texas, and Wisconsin all concluding that the RECs were owned by the  
 purchasing utility. (931 A.2d at 174 n.23.) The court further noted that regulatory agencies in Colorado, Nevada,  
 Oregon, Rhode Island, Texas, and Utah had concluded that the RECs associated with purchase agreements executed after  
 the creation of the statutory scheme regulating RECs belong to the generator of the associated energy. (*Id.*)

1 11/3 Comments render the rules unclear. However, APS asserted that it did not believe the NPRM  
 2 language would allow APS to count non-utility owned RECs toward compliance. (Tr. II at 24.) And  
 3 APS was unable to identify any difference in the information that it would report to the Commission  
 4 under the NPRM as opposed to the NPRM as modified per the 11/3 Comments. (Tr. II at 27.) It is  
 5 difficult to understand APS's concerns if APS did not believe that "acknowledgment" would include  
 6 counting of RECs (or measuring of the associated kWhs) for purposes of compliance. The only way  
 7 to comply with the rules currently is by meeting the requirements of § 1804 and § 1805 (or obtaining  
 8 a waiver). APS did not explain how providing additional information would comply with § 1805 if  
 9 there were insufficient utility-owned RECs. If APS did believe that acknowledgment under the  
 10 NPRM language would include counting or measuring for purposes of compliance, such a belief  
 11 would underscore the need for the Commission to clarify its intent and to make the clarifying  
 12 modifications set forth in the 11/3 Comments.

13 68. Because the NPRM did not alter § 1804(A) or § 1805(A), each of which specifically  
 14 requires affected utilities to satisfy annual requirements by obtaining RECs,<sup>34</sup> any interpretation of  
 15 the NPRM language to allow a path for compliance other than through the acquisition of RECs (or  
 16 obtaining a waiver) would be in conflict with the plain language of the rules, both as they exist now  
 17 and as proposed to be amended in the NPRM. Nonetheless, commenters in this matter other than  
 18 APS were concerned that such a conflict would be created by the NPRM language, and all of those  
 19 who expressed such a concern found that the modifications suggested in the 11/3 Comments would  
 20 alleviate the concern by making it clear that the energy associated with non-utility owned RECs  
 21 would be reported for informational purposes only and not for compliance purposes. This is the only  
 22 meaning that is consistent with the REST rules as a whole, both as they currently exist and as  
 23 proposed to be modified in the NPRM.<sup>35</sup> We find that it is important and in the public interest for the

24 <sup>34</sup> § 1804(A) states: "In order to ensure reliable electric service at reasonable rates, each Affected Utility shall be  
 25 required to satisfy an Annual Renewable Energy Requirement by obtaining Renewable Energy Credits from Eligible  
 Renewable Energy Resources."

26 § 1805(A) states: "In order to improve system reliability, each Affected Utility shall be required to satisfy a Distributed  
 Renewable Energy Requirement by obtaining Renewable Energy Credits from Distributed Renewable Energy  
 27 Resources."

28 <sup>35</sup> Arizona Courts will interpret a rule in a manner that harmonizes and gives meaning to all of its components and will  
 assume that an enacting body's decision not to amend or repeal any provision was intentional and that any intention to  
 supersede or repeal any provision is stated clearly. (*See Curtis v. Morris*, 184 Ariz. 393 (Ariz. Ct. App. 1995).) As the

1 Commission to ensure that the meaning of the REST rules as proposed in the NPRM is clarified in  
 2 the actual final rule language, by adopting the modifications set forth in the 11/3 Comments, to allay  
 3 concerns about double counting and potential regulatory taking of RECs and avoid the litigation and  
 4 costs that may result from such concerns. Neither this Decision nor the Preambles to the NPRM or  
 5 Final Rulemaking will be codified in the Administrative Code. Thus, to avoid future interpretation  
 6 issues, it is important for the rule language to clearly communicate the Commission's intent.  
 7 Additionally, the Commission has a legal obligation to make its rules clear, as a matter of ensuring  
 8 due process for those subject to the rules.<sup>36</sup> If the Commission were not to clarify the rules, and a  
 9 court were to determine that the rules were unconstitutionally vague, the rules would be invalidated.

#### 10 **Authority for this Rulemaking**

11 69. The Commission possesses the authority to engage in rulemaking under both its  
 12 constitutional authority and its statutory authority endowed by the legislature. In the NPRM, Staff  
 13 cited both constitutional authority and statutory authority for this rulemaking.<sup>37</sup>

14 70. Arizona Constitution Article 15, § 3 ("Art. 15, § 3") provides, in pertinent part:

15 The corporation commission shall have full power to, and shall, prescribe  
 16 just and reasonable classifications to be used and just and reasonable rates  
 17 and charges to be made and collected, by public service corporations  
 within the state for service rendered therein, and make reasonable rules,

18 court stated in *Curtis v. Morris*, "[i]f the legislature had intended to overturn both its own clear statutory language and the  
 19 long-standing precedent interpreting that language, we believe the legislature would have made that intention clear." (184  
 Ariz. at 397.) The court also stated:

20 We also believe that our holding is consistent with the canon of statutory construction that prefers  
 an interpretation giving meaning to all parts of a statute over one that makes part of the statute  
 21 meaningless:

22 In construing a statute or rule, we presume that the promulgating body did not intend  
 to do a futile act by including a provision that is not operative or that is inert and  
 23 trivial. We must give each word, phrase, clause and sentence meaning so that no part  
 of the rule is rendered superfluous, void, insignificant, redundant or contradictory.

(*Id.* (quoting *Patterson v. Maricopa County Sheriff's Office*, 177 Ariz. 153, 156 (Ariz. Ct. App. 1993)).)

24 <sup>36</sup> "A rule is impermissibly vague if it 'allows for arbitrary and discriminatory enforcement by failing to provide an  
 objective standard for those who are charged with enforcing or applying the law.'" (*Mercy Healthcare Ariz., Inc. v.*  
*AHCCCS*, 181 Ariz. 95, 100 (Ariz. Ct. App. 1994) (citation omitted.)) A rule's failure to provide explicit standards,  
 25 which can lead to arbitrary and discriminatory application, is a violation of due process. (*In re Appeal in Maricopa*  
*County Juvenile Action No. JS-5209 and No. JS-4963*, 143 Ariz. 178, 183 (Ariz. Ct. App. 1984).) "It is a basic principle  
 26 of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." (*Grayned v. City of*  
*Rockford*, 408 U.S. 104, 108 (1972).) Vague laws do not provide a person of ordinary intelligence a reasonable  
 27 opportunity to determine what the law requires and allow for arbitrary and discriminatory enforcement by not providing  
 explicit standards for its application, thereby impermissibly delegating basic policy matters for resolution on an ad hoc  
 and subjective basis by those who apply them. (*Id.* at 108-09.)

28 <sup>37</sup> Specifically, Staff cited the following: Arizona Const. Art. 15, § 3; A.R.S. §§ 40-202, 40-203, 40-321, and 40-322.

1 regulations, and orders, by which such corporations shall be governed in  
 2 the transaction of business within the state, and may prescribe the forms of  
 3 contracts and the systems of keeping accounts to be used by such  
 4 corporations in transacting such business, and make and enforce  
 5 reasonable rules, regulations, and orders for the convenience, comfort, and  
 6 safety, and the preservation of the health, of the employees and patrons of  
 such corporations; . . . Provided further, that classifications, rates, charges,  
 rules, regulations, orders, and forms or systems prescribed or made by said  
 corporation commission may from time to time be amended or repealed by  
 such commission.

7 The Arizona Supreme Court has declared that this constitutional provision gives the Commission  
 8 exclusive authority to establish rates and to enact rules that are reasonably necessary steps in  
 9 ratemaking and, further, that deference must be given to the Commission's determination of what  
 10 regulation is reasonably necessary for effective ratemaking.<sup>38</sup>

11 71. Staff believes that this rulemaking is authorized under the Commission's exclusive  
 12 ratemaking authority under Art. 15, § 3, although specific statutes were also cited in the Preamble to  
 13 the NPRM as providing additional authority. Staff does not believe that it is necessary and did not  
 14 intend to submit the rulemaking to the Attorney General's office for certification under A.R.S. § 41-  
 15 1044.

16 72. In *Miller v. Arizona Corporation Commission*, 227 Ariz. 21 (Ariz. Ct. App. 2011), in  
 17 the face of a collateral attack, the Arizona Court of Appeals determined that the Commission's  
 18 original adoption of the REST rules had been authorized by the Commission's exclusive and plenary  
 19 ratemaking authority under Art. 15, § 3. *Inter alia*, the court stated the following:

20 In its ratemaking capacity, the Commission looks at more than "setting a  
 21 fair return on a predetermined value." *Woods*, 171 Ariz. at 296, 830 P.2d  
 22 at 817. The Commission may take a "broader view" and consider, for  
 23 example, risks associated with contemplated action or inaction. *See id.*  
 24 (noting that inter-corporate dealings "can have disastrous consequences  
 for the economic viability of the entire enterprise," ultimately prejudicing  
 ratepayers). Or, as the *Woods* court more colorfully put it, the Commission  
 has "the power to lock the barn door before the horse escapes." *Id.* at 297,  
 830 P.2d at 818.

25 The record here establishes a sufficient nexus between the REST rules and  
 26

27 <sup>38</sup> *Arizona Corporation Comm'n v. Woods*, 171 Ariz. 286, 294 (1992) ("*Woods*") (concluding that the Commission had  
 28 the authority under its constitutional ratemaking power to enact its Affiliated Interest rules, because they are reasonably  
 necessary for ratemaking, and giving deference to the Commission's determination of what regulation is reasonably  
 necessary for effective ratemaking).

1 ratemaking. Prophylactic measures designed to prevent adverse effects on  
 2 ratepayers due to a failure to diversify electrical energy sources fall within  
 the Commission's power "to lock the barn door before the horse escapes."  
 3 *Id.* Indeed, as *Woods* found in the context of inter-company transactions,  
 "[i]t would subvert the intent of the framers to limit the Commission's  
 4 ratemaking powers so that it could do no more than raise utility rates to  
 cure the damage." *Id.* at 296, 830 P.2d at 817.

5 In formulating the REST rules, the Commission considered price  
 6 fluctuations, transportation disruptions, and shortages associated with  
 conventional fuel sources, noting that renewable resources are not subject  
 7 to these same vagaries. Its findings connect the identified risks to the  
 financial stability of utilities and, therefore, to consumer electric rates. The  
 8 Commission also found that Arizona's anticipated load growth requires the  
 identification and development of new sources of electrical generation to  
 9 ensure adequate service to utility customers. It concluded that  
 diversification through the use of renewable energy is directly linked to  
 10 the "security, convenience, health and safety" of utility customers and the  
 general public.

11 The record demonstrates a relationship between the REST rules and  
 12 electric rates. If anything, the ratemaking connection is stronger here than  
 with the affiliated interest rules at issue in *Woods*.<sup>39</sup>

13  
 14 73. The reasons stated by the *Miller* court in concluding that the REST rules as originally  
 15 promulgated were wholly authorized by the Commission's constitutional ratemaking authority would  
 16 apply equally to the proposed revisions to the REST rules contemplated herein. Staff's citing  
 17 statutory authority for this rulemaking does not waive its position that this rulemaking is wholly  
 18 authorized under Art. 15, § 3.

19 74. A.R.S. § 40-202(A) provides: "The commission may supervise and regulate every  
 20 public service corporation in the state and do all things, whether specifically designated in this title or  
 21 in addition thereto, necessary and convenient in the exercise of that power and jurisdiction." This  
 22 language, while very broad, has been interpreted by the Arizona Supreme Court as bestowing no  
 23 additional powers on the Commission other than those already granted by the Arizona Constitution or  
 24 specifically granted elsewhere by the legislature, although the Court acknowledged that it also  
 25 provides the Commission the authority to do those things necessary and convenient in the exercise of  
 26 the powers so granted.<sup>40</sup>

27 <sup>39</sup> *Miller*, 227 Ariz. at 28-29.

28 <sup>40</sup> *Southern Pacific Co. v. Arizona Corp. Comm'n*, 98 Ariz. 339, 348 (1965); see also *Phelps Dodge Corp. v. Arizona Elec. Power Co-op, Inc.*, 207 Ariz. 95 (Ariz. Ct. App. 2004).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

75. A.R.S. § 40-203 provides:

When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.

76. A.R.S. § 40-321 states, in pertinent part:

A. When the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation.

B. The commission shall prescribe regulations for the performance of any service or the furnishing of any commodity, and upon proper demand and tender of rates, the public service corporation shall furnish the commodity or render the service within the time and upon the conditions prescribed.

77. A.R.S. § 40-322(A) states, in pertinent part:

A. The commission may:

1. Ascertain and set just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished and followed by public service corporations other than a railroad.

2. Ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished by such public service corporation.

78. The Commission finds that the Commission's constitutional authority wholly authorizes the Commission to make revisions to § 1805 and § 1812 as proposed in the NPRM attached hereto as Exhibit A, and to make revisions to § 1805 and § 1812 as suggested in the 11/3 Comments attached hereto as Exhibit B. The Commission further finds, without waiving its position that the changes are wholly authorized by Art. 15, § 3, that it has statutory authority to make such changes through rulemaking.

...

1 **Rulemaking Requirements**

2 79. The Commission is an “agency” under the Administrative Procedure Act (“APA”),  
3 A.R.S. Title 41, Chapter 6 (A.R.S. §§ 41-1001 through 41-1092.12), and is generally subject to APA  
4 requirements.

5 80. A.R.S. § 41-1001(19) defines a rule as follows:

6 “Rule” means an agency statement of general applicability that  
7 implements, interprets or prescribes law or policy, or describes the  
8 procedure or practice requirements of an agency. Rule includes  
prescribing fees or the amendment or repeal of a prior rule but does not  
include intraagency memoranda that are not delegation agreements.

9 81. Under A.R.S. § 41-1057, the Commission is exempted from Article 5 of the APA  
10 (A.R.S. §§ 41-1051 through 41-1057), pertaining to the Governor’s Regulatory Review Council  
11 (“GRRC”), but is required to adopt substantially similar rule review procedures, to include  
12 preparation of an EIS.

13 82. A.R.S. § 41-1044 requires the Attorney General to review rules that are exempt under  
14 A.R.S. § 41-1057 and further requires that such rules not be submitted to the Office of the Secretary  
15 of State unless first approved by the Attorney General.

16 83. Although Commission rules generally are subject to review and certification by the  
17 Attorney General under A.R.S. § 41-1044 before they become effective, Commission rules  
18 promulgated pursuant to the Commission’s exclusive and plenary constitutional ratemaking authority  
19 need not be submitted to the Attorney General for certification. (*State ex rel. Corbin v. Arizona Corp.*  
20 *Comm’n*, 174 Ariz. 216, 848 P.2d 301 (Ariz. Ct. App. 1992); *Phelps Dodge Corp. v. Arizona Elec.*  
21 *Power Coop.*, 207 Ariz. 95, 83 P.3d 573 (Ariz. Ct. App. 2004).)

22 84. A.R.S. § 40-1030(A) provides that “[a] rule is invalid unless it is made and approved  
23 in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this  
24 chapter, unless otherwise provided by law.”

25 85. A.R.S. § 41-1022(E) provides that if, as a result of public comment or internal review,  
26 an agency determines that a proposed rule requires substantial change pursuant to A.R.S. § 41-1025,  
27 the agency shall issue a supplemental notice containing the changes in the proposed rule and shall  
28

1 provide for additional public comment pursuant to A.R.S. § 41-1023.

2       86. A.R.S. § 41-1025 prohibits an agency from adopting a final rule that is substantially  
3 different from the rule proposed by the agency in its NPRM and provides that an agency must  
4 consider all of the following in determining whether a rule is substantially different from the  
5 proposed rule published in the NPRM:

6               1. The extent to which all persons affected by the rule should  
7 have understood that the published proposed rule would affect their  
8 interests.

9               2. The extent to which the subject matter of the rule or the  
10 issues determined by that rule are different from the subject matter or  
11 issues involved in the published proposed rule.

12               3. The extent to which the effects of the rule differ from the  
13 effects of the published proposed rule if it had been made instead.

14       87. If an agency desires to make a rule substantially different from the rule proposed in an  
15 NPRM, A.R.S. § 41-1025(A) allows the agency, in lieu of engaging in supplemental proposed  
16 rulemaking, to terminate the existing rulemaking and commence a new rulemaking for purposes of  
17 adopting the substantially different rule.

18       88. Since fiscal year 2009-2010, Arizona has had in place a general rulemaking  
19 moratorium, first through creation of the legislature<sup>41</sup> and then through gubernatorial orders. The  
20 most recent gubernatorial order, Executive Order 2012-03 (“EO 2012-03”), effective on June 26,  
21 2012, and expiring on December 31, 2014, generally prohibits a state agency from conducting  
22 rulemaking except for specific purposes and with prior written approval from the Office of the  
23 Governor. However, EO 2012-03 expressly exempts the Commission from its applicability, although  
24 it encourages all exempted state officials and agencies to participate voluntarily within the context of  
25 their own rulemaking processes.

26       89. Because the Commission finds that this rulemaking is being conducted pursuant to its  
27 plenary and exclusive ratemaking authority under Art. 15, § 3, the Commission is not required to  
28 obtain Attorney General certification of this rulemaking under A.R.S. § 41-1044 and may instead  
submit a Notice of Final Rulemaking directly to the Office of the Secretary of State for publication.

      90. A.R.S. § 41-1032(A) provides that a final rule filed with the Office of the Secretary of

<sup>41</sup> See Laws 2010, Ch. 287, § 18 (amending Laws 2009 (3rd Special Session) Ch. 7, § 28).

1 State under A.R.S. § 41-1031 becomes effective 60 days after filing unless the rulemaking agency  
2 includes in the preamble information demonstrating that the rule needs to be effective immediately  
3 upon filing, for one of five reasons listed in the statute. No information has been provided in this  
4 rulemaking to indicate that this rulemaking would need to take effect immediately.

5 **Substantial Change Analysis**

6 91. To determine whether the modifications included in the 11/3 Comments would  
7 constitute a substantial change to the rules, we look at the factors listed in A.R.S. § 41-1025. The  
8 first of these factors is the “extent to which all persons affected by the rule should have understood  
9 that the published proposed rule would affect their interests.” Aside from the Commission itself, the  
10 persons affected by the rule as proposed in the NPRM include affected utilities, customers of affected  
11 utilities, and persons involved with the solar industry. As stated previously, Commission Staff made  
12 efforts to notify these interested persons in August 2014 by mail to the service lists for the Track &  
13 Record Docket and this docket and by email to the Commission’s blast list. The publication of the  
14 NPRM in the *Arizona Administrative Register* in October 2014 provided notice to the public in  
15 general. If the proposed rules were revised through adoption of the modifications included in the  
16 11/3 Comments, the pool of affected persons would not change in any respect. All affected persons  
17 should be on notice of the existence of this rulemaking and, further, should be on notice that the  
18 rulemaking would affect their interests. Consideration of the first factor does not indicate a  
19 substantial change.

20 92. The second factor is the “extent to which the subject matter of the rule or the issues  
21 determined by that rule are different from the subject matter or issues involved in the published  
22 proposed rule.” The subject matter of this rulemaking as proposed in the NPRM involves the  
23 information that is to be reported to the Commission in annual reports under § 1812, the Commission  
24 consideration of that information, and the impacts that Commission consideration is to have on RECs  
25 and kWhs that are not owned by utilities. The revision of the proposed rules through adoption of the  
26 modifications included in the 11/3 Comments would neither expand nor narrow the subject matter of  
27 the rulemaking, which would still involve reporting under § 1812, Commission consideration of the  
28 information reported, and the impacts that Commission consideration is to have on RECs and kWhs

1 not owned by utilities. Consideration of the second factor does not indicate a substantial change.

2 93. The third factor is the “extent to which the effects of the rule differ from the effects of  
3 the published proposed rule if it had been made instead.” The effects of the rule, as published in the  
4 NPRM, would be that an affected utility’s additional reported information would be considered by the  
5 Commission in the context of the utility’s REST Implementation Plan and would be considered only  
6 “for informational purposes”<sup>42</sup>—*i.e.*, not for purposes of compliance—so as to “protect the value of  
7 RECs and avoid the issue of double counting.”<sup>43</sup> Additionally, because the proposed rules as  
8 published in the NPRM made no changes to either § 1804(A) or § 1805(A), utilities would continue  
9 to be required to obtain RECs to satisfy annual REST requirements under the proposed rules as  
10 published in the NPRM (or to obtain waivers). While some interested persons were concerned that  
11 the NPRM proposed rule language signified that non-utility owned RECs (or the kWhs associated  
12 with those RECs) would somehow be applied or counted toward determining a utility’s annual  
13 compliance with the REST rules, the language of the proposed rules as published in the NPRM did  
14 not state that. Rather, the proposed rule language required additional reporting regarding such kWhs  
15 and RECs and stated that RECs not owned by a utility would be retained by their owners, regardless  
16 of any Commission acknowledgment of the associated kWhs. The modifications included in the 11/3  
17 Comments would simply clarify that those newly reported kWhs and the associated non-utility owned  
18 RECs are not to be used for compliance purposes. This is consistent with the NPRM rule language,  
19 albeit clearer, and would not change the effects of the proposed rules (except to the extent that clarity  
20 provides a benefit both to the Commission and regulated or otherwise impacted entities). Thus,  
21 consideration of the third factor also indicates that the modifications suggested in the 11/3 Comments  
22 do not reflect a substantial change.

23 94. We agree with Staff that the suggested changes in the 11/3 Comments serve to clarify  
24 the Commission’s intentions for the proposed rules without resulting in a substantial change to the  
25 proposed rules as included in the NPRM. With the modifications in the 11/3 Comments, the  
26 rulemaking will more clearly be understood to expand the annual reporting requirements for utilities,

27 \_\_\_\_\_  
28 <sup>42</sup> Exhibit A, 20 A.A.R. 2750-51, item 8(1), 8(4)(B).

<sup>43</sup> Exhibit A, 20 A.A.R. 2750, item 8(1).

1 so that the Commission is made aware of all of the renewable energy being produced in a utility's  
2 service territory (through the efforts of the utility and others), and to allow the Commission to  
3 consider all relevant information available should the Commission desire to determine whether an  
4 affected utility's annual report satisfies the REST rules. (As noted previously, the Commission has  
5 not historically made determinations regarding whether a utility's annual report satisfies the REST  
6 rules or whether a utility has complied with its approved REST Implementation Plan, although §  
7 1812(C) and § 1815(C) allow the Commission to do so.) This clarified understanding is consistent  
8 with statements made in Commissioner Brenda Burns's May 21, 2014, letter, in which she  
9 emphasized that the Commission is most concerned with being made aware of all of the renewable  
10 energy produced in the state, that the Commission does not intend to double count RECs, that the  
11 Commission does not intend to take REC attributes from REC owners, and that the Commission does  
12 not intend to reduce the REST standards through this rulemaking. This clarified understanding is also  
13 consistent with the language in § 1804(A) and § 1805(A), to which the Commission has not proposed  
14 any changes. For all of these provisions and expressed intentions to have meaning, and to be legally  
15 operable, one must conclude (as Staff did) that Commission "acknowledgment" does not count or use  
16 a REC and that the expanded reporting under § 1805 is made for informational purposes rather than  
17 for purposes of demonstrating compliance with the REST standards.<sup>44</sup> The NPRM Preamble  
18 reflected this in more than one area, and with the modifications included in the 11/3 Comments, the  
19 rulemaking adopted by the Commission will more clearly reflect this as well.

#### 20 **Commission Responses to Public Comments**

21 95. A summary of the oral and written comments received October 10 through November  
22 18, 2014, along with the Commission's responses thereto, is attached hereto and incorporated herein  
23 as Exhibit E. We find that the summary of comments and the Commission's responses to those  
24 comments, as set forth in Exhibit E, are reasonable and appropriate and should be included in the

25 \_\_\_\_\_  
26 <sup>44</sup> A number of interested persons have made it clear that applying non-utility owned RECs, or the kWhs associated  
27 with them, to direct consideration of a utility's REST rules compliance would constitute a counting of the RECs/kWhs  
28 that would invalidate those RECs for any other purpose. While some may argue that it is possible to consider those  
RECs/kWhs without actually counting them, the information provided in this matter is overwhelmingly to the contrary.  
At the very least, any attempt to consider those RECs/kWhs in relation to a utility's compliance would appear to taint the  
RECs/kWhs such that their value would be compromised.

1 Preamble for a Notice of Final Rulemaking in this matter.

2 **Economic Impact Statement**

3 96. Staff has provided, in the Preamble to the NPRM, information proposed to be used for  
4 an EIS to satisfy the requirements of A.R.S. §§ 41-1057 and 41-1055.<sup>45</sup>

5 97. We find that the information included in the document attached hereto and  
6 incorporated herein as Exhibit F substantially conforms to the requirements of A.R.S. §§ 41-1057 and  
7 41-1055, and we adopt it as the EIS for this rulemaking.

8 **Conclusion**

9 98. Because the Commission desires to be informed on an annual basis of all of the  
10 renewable energy production within each affected utility's service territory, along with the RECs  
11 associated with that energy and the ownership of those RECs, as well as all other information  
12 available concerning the renewable energy market, such as market installations, historical and  
13 projected production capacity levels in each segment of the DE market, and other indicators of  
14 market sufficiency, it is just and reasonable and in the public interest for the Commission to adopt the  
15 amendments to § 1805 and § 1812 proposed in the NPRM, with the additional modifications included  
16 in the 11/3 Comments.

17 99. The proposed § 1805 and § 1812, as set forth in the NPRM attached hereto as Exhibit  
18 A, and with the additional revisions reflected in the 11/3 Comments attached hereto as Exhibit B,  
19 should be submitted directly to the Office of the Secretary of State in the form of a Notice of Final  
20 Rulemaking package conforming to the requirements of A.R.S. § 41-1001(16)(d) and the Rules of the  
21 Office of the Secretary of State.<sup>46</sup> The Final Rulemaking package should include the separate  
22 Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F.

23 **CONCLUSIONS OF LAW**

24 1. Pursuant to Arizona Constitution, Art. 15, § 3, the Commission has authority and  
25 jurisdiction to amend A.A.C. Title 14, Chapter 2, Article 18 by revising § 1805 and § 1812 as set

26 \_\_\_\_\_  
27 <sup>45</sup> Although A.R.S. § 41-1057 exempts the Commission from having its rules reviewed by GRRC and from application  
of A.R.S. § 41-1055, it also requires the Commission to adopt substantially similar rule review procedures, to include  
preparation of "an economic impact statement and a statement of the effect of the rule on small business."

28 <sup>46</sup> See, e.g., A.A.C. R1-1-105(D), R1-1-601, and R1-1-602.

1 forth in the NPRM attached hereto as Exhibit A and with the additional revisions included in the 11/3  
2 Comments attached hereto as Exhibit B.

3 2. The revised § 1805 and § 1812, as set forth in Exhibit A and revised per Exhibit B, are  
4 reasonably necessary steps for effective ratemaking.

5 3. Because the Commission is adopting the revised § 1805 and § 1812 under its  
6 exclusive and plenary constitutional ratemaking authority under Art. 15, § 3, the Commission is not  
7 required to submit this rulemaking to the Office of the Attorney General for certification under  
8 A.R.S. § 41-1044.

9 4. Notice of the oral proceedings regarding the NPRM was provided in the manner  
10 prescribed by law.

11 5. The amendments to § 1805 and § 1812 proposed in Exhibit A and revised per Exhibit  
12 B are clear, concise, and understandable; within the Commission's power to make; within enacted  
13 legislative standards; and made in compliance with appropriate procedures.

14 6. The amendments to § 1805 and § 1812 proposed in Exhibit A and revised per Exhibit  
15 B do not constitute rule changes that are substantially different than the rule changes that would result  
16 from the NPRM alone under A.R.S. § 41-1025.

17 7. Adoption of the amendments to § 1805 and § 1812 proposed in Exhibit A and revised  
18 per Exhibit B is just and reasonable and in the public interest.

19 8. The Economic, Small Business, and Consumer Impact Statement attached hereto as  
20 Exhibit F substantially conforms to the requirements of A.R.S. §§ 41-1057 and 41-1055 and should  
21 be adopted.

22 9. The summary of the written and oral comments received regarding the NPRM and the  
23 11/3 Comments, and the Commission's responses to those comments, as set forth in Exhibit E, are  
24 accurate, comply with A.R.S. § 41-1001(16)(d), and should be included in the Preamble for the  
25 Notice of Final Rulemaking for this matter.

26 10. It is just and reasonable and in the public interest for the Commission to take the  
27 actions described in Findings of Fact No. 99.

28 ...

**ORDER**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS THEREFORE ORDERED that the Commission hereby adopts the revised Arizona Administrative Code R14-2-1805 and R14-2-1812 as set forth in Exhibit A and revised per Exhibit B hereto.

IT IS FURTHER ORDERED that the Commission hereby adopts the Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F.

IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division Staff shall prepare and file with the Office of the Secretary of State, for publication as an approved final rule, a Notice of Final Rulemaking that includes the text of the amended R14-2-1805 and R14-2-1812, set forth in Exhibit A and revised per Exhibit B, and a Preamble that conforms to Arizona Revised Statutes § 41-1001(16)(d) and includes a summary of comments and Commission responses as set forth in Exhibit E and an Economic Impact Summary consistent with the Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F. The Commission's Utilities Division Staff/Legal Division Staff shall also file with the Office of the Secretary of State the separate Economic, Small Business, and Consumer Impact Statement attached hereto as Exhibit F, along with any additional documents required by the Office of the Secretary of State for publication and codification.

...  
...  
...  
...  
...  
...  
...  
...  
...  
...

1 IT IS FURTHER ORDERED that the Commission's Utilities Division Staff/Legal Division  
2 Staff is authorized to make non-substantive changes in the adopted Arizona Administrative Code  
3 R14-2-1805 and R14-2-1812 set forth in Exhibit A and revised per Exhibit B; the adopted Economic,  
4 Small Business, and Consumer Impact Statement attached as Exhibit F; and any additional  
5 documents required by the Office of the Secretary of State, in response to comments received from  
6 the Office of the Secretary of State during the publication and/or codification process unless, after  
7 notification of those changes, the Commission requires otherwise.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
10  
11

12 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

13  
14 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

15  
16 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
17 Director of the Arizona Corporation Commission, have  
18 hereunto set my hand and caused the official seal of the  
19 Commission to be affixed at the Capitol, in the City of Phoenix,  
20 this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

21  
22 \_\_\_\_\_  
23 JODI JERICH  
24 EXECUTIVE DIRECTOR

25  
26 DISSENT \_\_\_\_\_

27  
28 DISSENT \_\_\_\_\_  
SH:tv

1 SERVICE LIST FOR: RULEMAKING

2 DOCKET NO.: RE-00000C-14-0112

3

4 Tyler Carlson  
 4 Peggy Gillman  
 Mohave Electric Cooperative, Inc.  
 5 P.O. Box 1045  
 Bullhead City, AZ 86430-1045

Roy Archer  
 Ajo Improvement Company  
 P.O. Drawer 9  
 Ajo, AZ 85321

6

7 Gregory Bernosky  
 Arizona Public Service Company  
 400 N. 5th St., MS 9708  
 8 Phoenix, AZ 85004

Michael Pearce  
 Duncan Valley Electric Cooperative, Inc.  
 P.O. Box 440  
 Duncan, AZ 85534

9

9 Deborah Scott  
 Thomas Loquvam  
 10 Arizona Public Service Company  
 400 N. 5th St., MS 8695  
 11 Phoenix, AZ 85004

Annie Lappe  
 Rick Gilliam  
 The Vote Solar Initiative  
 1120 Pearl St., Suite 200  
 Boulder, CO 80302

12

12 Ruel Rogers  
 The Morenci Water & Electric Company  
 13 P.O. Box 68  
 Morenci, AZ 85540

Timothy Hogan  
 Arizona Center for Law in the Public Interest  
 202 E. McDowell Rd., Suite 153  
 Phoenix, AZ 85004

14

14 Creden Huber  
 15 Sulphur Springs Valley Electric Cooperative, Inc.  
 350 N. Haskell Ave.  
 16 Willcox, AZ 85643

Giancarlo Estrada  
 Kamper, Estrada & Simmons  
 3030 N. 3rd St., Suite 200  
 Phoenix, AZ 85012

17

17 Kirk Gray  
 Graham County Electric Cooperative, Inc.  
 18 P.O. Drawer B  
 Pima, AZ 85543

David Berry  
 Western Resource Advocates  
 P.O. Box 1064  
 Scottsdale, AZ 85252-1064

19

19 Carline Gardiner  
 20 Trico Electric Cooperative, Inc.  
 P.O. Box 930  
 21 Marana, AZ 85653-0930

Bradley Carroll  
 Tucson Electric Power Company  
 88 E. Broadway Blvd. MS HQE910  
 P.O. Box 711  
 Tucson, AZ 85702

22

22 Charles Moore  
 Navopache Electric Cooperative  
 23 1878 W. White Mountain Blvd.  
 Lakeside, AZ 85929

Kevin Koch  
 612 N. Seventh Ave.  
 Tucson, AZ 85705

24

24 Michael Patten  
 25 Roshka DeWulf & Patten, PLC  
 One Arizona Center  
 26 400 E. Van Buren St., Suite 800  
 Phoenix, AZ 85004

Daniel Pozefsky  
 Residential Utility Consumer Office  
 1110 W. Washington, Suite 220  
 Phoenix, AZ 85007

27

27

Garry D. Hays  
 The Law Office of Garry D. Hays PC  
 1702 E. Highland Ave., Suite 204  
 Phoenix, AZ 85016

1 C. Webb Crockett  
Patrick J. Black  
2 Fennemore Craig, P.C.  
2394 E. Camelback Rd., Suite 600  
3 Phoenix, AZ 85016

4 Michael Neary  
Arizona Solar Energy Industries Association  
5 111 W. Renee Dr.  
Phoenix, AZ 85027

6 Craig Marks  
7 10645 N. Tatum Blvd., Suite 200-676  
Phoenix, AZ 85028

8 Deborah Scott  
9 P.O. Box 53999  
Phoenix, AZ 85072

10 Kyle Smith  
11 Office of the Judge Advocate General  
U.S. Army Legal Services  
12 9275 Gunston Rd.  
Fort Belvoir, VA 22060-5546

13 Karen White  
14 U.S. Air Force Utility Law Field  
Support Center  
15 139 Barnes Dr.  
Tyndall AFB, FL 32403

16 Christopher Thomas  
17 Fred E. Breedlove III  
Squire Sanders (US) LLP  
18 1 E. Washington, 27th Floor  
Phoenix, AZ 85004

19 Scott Wakefield  
20 Ridenour, Hienton & Lewis, PLLC  
201 N. Central Ave., Suite 3300  
21 Phoenix, AZ 85004-1052

22 Rick Umoff  
Solar Energy Industries Association  
23 505 9th St. NW, Suite 800  
Washington, DC 20004

24 Court Rich  
25 Rose Law Group PC  
7144 E. Stetson Dr., Suite 300  
26 Scottsdale, AZ 85251

Michael Curtis  
William Sullivan  
Curtis, Goodwin, Sullivan, Udall &  
Schwab, P.L.C.  
501 E. Thomas Rd.  
Phoenix, AZ 85012-3205

John Wallace  
Grand Canyon State Electric  
Cooperative Association  
2210 S. Priest Dr.  
Tempe, AZ 85282-1109

Robin Quarrier  
Jennifer Martin  
Center for Resource Solutions  
1012 Torrey Ave.  
San Francisco, CA 94129

Ken Baker  
Wal-Mart Stores, Inc.  
2011 S.E. 10th St.  
Bentonville, AR 72716-0550

Kerry Hattevik  
Next Era Energy Resources, LLC  
829 Arlington Blvd.  
El Cerrito, CA 94530

Douglas V. Fant  
Law Offices of Douglas V. Fant  
3655 W. Anthem Way, Suite A-109, PMB 411  
Anthem, AZ 85086

Kevin Higgins  
Energy Strategies, LLC  
215 S. State St., Suite 200  
Salt Lake City, UT 84111

Maja Wessels  
First Solar  
350 W. Washington St.  
Tempe, AZ 85281

Joe King  
Arizona Electric Power Cooperative  
P.O. Box 670  
Benson, AZ 85602

Christopher Martinez  
Columbus Electric Cooperative  
P.O. Box 631  
Deming, NM 88031

28

1 LaDel Laub  
Dixie-Escalante Rural Electric Association  
71 E. Highway 56  
2 Beryl, UT 84714-5197

3 Carl Albrecht  
Garkane Energy Cooperative  
4 P.O. Box 465  
Loa, UT 84747  
5

6 Greg Bass  
Noble Americas Energy Solutions  
401 W. A Street, Suite 500  
7 San Diego, CA 92101-3017

8 Laura Palm Belmar  
Morgan Stine  
9 Green Earth Energy & Environmental, Inc.  
2370 W. SR 89A  
10 Suite 11 PMB 430  
Sedona, AZ 86336  
11

12 Josh Lieberman  
Renewable Energy Markets Association  
1211 Connecticut Ave NW, Suite 600  
13 Washington, DC 20036-2701

14 Anna Lands  
Cascabel Working Group  
15 6520 Cascabel Road  
Benson, AZ 85602  
16

17 Lawrence V. Robertson, Jr.  
P.O. Box 1448  
Tubac, AZ 85646  
18

19 Edward Burgess  
Kris Mayes Law Firm  
1 E. Camelback Road, Suite 550  
20 Phoenix, AZ 85012

21 Janice Alward, Chief Counsel  
Legal Division  
22 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
23 Phoenix, AZ 85007

24 Steven M. Olea, Director  
Utilities Division  
25 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
26 Phoenix, AZ 85007  
27  
28

## EXHIBIT A

## NOTICE OF PROPOSED RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;  
SECURITIES REGULATION

## CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

*Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2772.)*

[R14-158]

PREAMBLE

- |                                                                     |                                 |
|---------------------------------------------------------------------|---------------------------------|
| <b>1. <u>Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
| R14-2-1805                                                          | Amend                           |
| R14-2-1812                                                          | Amend                           |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
 Authorizing statute: Arizona Constitution article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-322.  
 Implementing statute: Arizona Constitution article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-322.
- The agency docket number, if applicable:**  
 RE-00000C-14-0112
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
 Notice of Rulemaking Docket Opening: 20 A.A.R. 2763, October 10, 2014 (*in this issue*).
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |                                                                       |
|------------|-----------------------------------------------------------------------|
| Name:      | Maureen Scott, Esq.<br>Attorney, Legal Division                       |
| Address:   | Corporation Commission<br>1200 W. Washington St.<br>Phoenix, AZ 85007 |
| Telephone: | (602) 542-3402                                                        |
| Fax:       | (602) 542-4870                                                        |
| E-mail:    | msscott@azcc.gov                                                      |
| Name:      | Robin Mitchell, Esq.<br>Attorney, Legal Division                      |
| Address:   | Corporation Commission<br>1200 W. Washington St.<br>Phoenix, AZ 85007 |
| Telephone: | (602) 542-3402                                                        |
| Fax:       | (602) 542-4870                                                        |
| E-mail:    | rmitchell@azcc.gov                                                    |

**Arizona Administrative Register / Secretary of State**  
**Notices of Proposed Rulemaking**

Name: Bob Gray  
 Executive Consultant, Utilities Division

Address: Corporation Commission  
 1200 W. Washington St.  
 Phoenix, AZ 85007

Telephone: (602) 542-0827

Fax: (602) 542-2129

E-mail: bgray@azcc.gov

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rule changes will clarify and update how the Commission deals with renewable energy compliance and related renewable energy credits ("RECs"). The Commission's Renewable Energy Standard and Tariff ("REST") rules have not been updated since they were approved by the Commission in Decision No. 69127 (November 14, 2006). Since this decision, the renewable energy marketplace has changed dramatically. The existing REST rules require the utility to serve a growing percentage of its retail sales each year via renewable energy, with a carve-out for distributed energy ("DE"). The rules were predicated on utilities acquiring RECs to achieve compliance. In the DE market, RECs were acquired by the utility when the utility gave the entity installing the renewable energy system an incentive. In recent years some utilities have seen their incentives eliminated as market conditions have changed. This led to utilities seeking guidance from the Commission as to how they should demonstrate compliance with the DE portion of the REST rules when the transaction REC acquisition was predicated upon is no longer occurring. This issue was explored in great detail in the context of the utilities 2013 annual renewable energy implementation plans as well as in the proceeding that culminated in Commission Decision No 74365 on February 26, 2014 (Docket Nos. E-01345-10-0394, etc.). Decision No. 74365 required the Commission Staff to propose new rules to the Commission. Staff made its filing, offering a number of options for the Commission to consider. At its September 9, 2014 Open Meeting, the Commission in Decision No. 74753 in Docket No. RE-00000C-14-0112, ordered Staff to file a Notice of Proposed Rulemaking which seeks comment on the attached changes to the REST rules intended to address the issue of utility compliance in the DE market in a post-incentive era. Absent action by the Commission on this issue, it is unclear how utilities who are no longer offering DE incentives would demonstrate compliance with the REST rules' DE requirements. This is not a critical issue for some utilities in their residential DE and/or commercial DE segments, as they are far ahead of current compliance goals. However, not all residential DE and commercial DE segments for affected utilities are ahead in compliance and thus it is necessary for the Commission to provide a new framework for considering compliance with the rules.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

N/A

**8. The preliminary summary of the economic, small business, and consumer impact:**

NOTE - The Arizona Corporation Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. See A.R.S. § 41-1057(2). However, under A.R.S. § 41-1057(2), the Arizona Corporation Commission is required to prepare a "substantially similar" statement.

1. NEED:

Under the present rules, utilities demonstrate compliance with the DE requirement through RECs. The proposed rule changes are necessary to address the problem created when DE incentives are no longer offered by the utility and the utility therefore no longer obtains RECs from the customer. The proposed rule changes do this by noting that the Commission may consider all available information. All available information may include measures such as market installations, historical and projected production and capacity levels in each segment of the DE market and other indicators of market sufficiency activity.

The proposed rule changes also provide a new requirement for the reporting of renewable production from facilities installed in a utility's service territory without an incentive which means the REC is not transferred to the utility. The proposed rules provide that these non-utility owned RECs will be acknowledged for informational purposes by the Commission. This language is intended protect the value of RECs and avoid the issue of double counting.

In addition, new language was added to the rules that explicitly states that RECs remain with the entity that created them absent the approval of the entity that they be transferred to the utility or another entity. This language is also meant to protect the value of RECs and prevent against the issue of double counting.

2. NAME AND ADDRESS OF AGENCY EMPLOYEE WHO MAY BE CONTACTED TO SUBMIT ADDITIONAL

*Arizona Administrative Register / Secretary of State***Notices of Proposed Rulemaking**

## DATA ON THE INFORMATION INCLUDED IN THIS STATEMENT:

Bob Gray, Executive Consultant, Utilities Division  
 Arizona Corporation Commission  
 1200 W. Washington Street  
 Phoenix, AZ 85007  
 Telephone Number (602) 542-0827; Fax Number (602) 542-2129

## 3. AFFECTED CLASSES OF PERSONS:

- A. Commission-regulated utilities
- B. Customers of Commission-regulated utilities
- C. The solar industry
- D. Arizona Corporation Commission

## 4. RULE IMPACT ON AFFECTED CLASSES OF PERSONS:

- A. Utilities subject to the REST rules will have a means to achieve compliance with the DE portion of the REST rules in a post-incentive environment.
- B. Utilities will have to report additional information in their reports in the form of production by non-incentivized DE production within its service territory. Utilities are already required to meter all DE production within their service territory, so the utility already has this information available, and this additional reporting requirement should not be burdensome. This reporting is intended to be for informational purposes only.
- C. The utility may also report information related to market activity. Thus information should be readily available to the utility and should not be burdensome. Regulatory certainty with respect to the Commission's rules will benefit all segments of the industry involved in the provision of solar, including the utilities, solar providers and customers.
- D. Some solar industry representatives may believe that the proposed rules do not provide sufficient protection for the value of RECs and such belief could also lead to a concern that there is a property rights issue if the value of RECs is impaired. These concerns are not warranted given the safeguards built into the proposed rules to only acknowledge kWh production associated with RECs not owned by the utility as well as language specifying that RECs are retained by the entity creating them absent the creating entity transferring the RECs to the utility or another entity. If the value of RECs were somehow impaired, it could have a negative impact on the costs associated with installing solar since RECs may be used to offset or lower the cost of the solar installation. Although there were some parties in the underlying Commission proceeding who believed the value or cost of RECs would be relatively low.
- E. Some solar industry representatives may believe that no change is necessary to the rules or that an alternative proposal should be adopted.

## 5. COSTS AND BENEFITS TO THE AGENCY:

The Commission will benefit from having a method for considering utility compliance with the REST rules that recognizes that the DE market may be self-sufficient and that incentives may no longer be necessary to incent solar installations in this market. The Commission will have a more complete picture of Arizona's renewable energy market by having information on all DE production in utility reports. The Commission will also benefit from receiving available information on market sufficiency and activity. There are minimal costs associated with this proposal because the Commission typically performs an analysis of the DE market in conjunction with the utilities' annual implementation plans.

## 6. COSTS AND BENEFITS TO POLITICAL SUBDIVISIONS:

There will be no impact to political subdivisions because the Commission does not have jurisdiction over political subdivisions and the Rules do not apply to them.

## 7. COSTS AND BENEFITS TO PRIVATE PERSONS:

Many utility customers may benefit from not having to pay more for utilities to achieve compliance with the REST rules, as would have resulted from some alternative proposals. Customers will benefit from the certainty these changes provide regarding the treatment of RECs by the Commission in a post-incentive environment. Customers will also be able to retain the value of any RECs they own. Some customers who own RECs may believe that the proposed rules do not provide sufficient protection for the value of RECs. If customers believe that the value of their RECs was brought into question, they may argue that they have property interests in the RECs which were being impaired. The Commission has built adequate protections into the rules so it is clear that the intent is for non-utility REC owners to retain the value of their RECs.

## 8. COST AND BENEFITS TO CONSUMERS OR USERS OF ANY PRODUCT OR SERVICE IN THE IMPLEMENTATION OF THE NEW RULES.

Customers of solar providers should benefit since there will be certainty with respect to REC ownership. Customers of the utilities should benefit since they will no longer be paying for incentives or additional costs for utilities to procure RECs in this market.

## 9. LESS COSTLY OR INTRUSIVE METHODS:

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

The amendments to the rules are one of the least cost methods for providing utilities with a path to DE compliance under the REST rules and, with respect to any incorporated by reference materials, provide for the Commission's rules to be consistent with A.R.S. § 41-1028 and the rules of the Secretary of State.

**10. ALTERNATIVE METHODS CONSIDERED:**

The Commission considered alternative methods offered in the utility annual implementation plans as well as the underlying Commission proceeding. A wide variety of proposals were put forward by Commission Staff, the Residential Utility Consumer Office, and a variety of other interested parties including utilities, solar providers, solar installers and various industry and environmental associations. These alternatives included the utility paying to acquire RECs, the utility claiming the RECs through interconnection or net metering activities, granting a waiver of portions of the REST rules, taking no action, reducing the REST requirement to reflect non-utility owned RECs, re-introduction of up-front incentives, creation of a maximum conventional energy requirement, utilities counting all RECs toward compliance, and recovery of DE costs through the standard rate case process. A number of these proposals had multiple variations. Each option had its pros and cons and in some cases parties disagreed on the effect of some proposals on preservation of the value of RECs and other issues. Generally the other options were considered to have one or more of the following flaws: it increased costs paid by ratepayers through the REST surcharge, it did not preserve the 15 percent overall REST requirement, it either did not or it was questionable whether it maintained the value of the RECs, and/or it was overly complicated and cumbersome.

**2. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Maureen Scott, Esq.  
 Attorney, Legal Division

Address: Corporation Commission  
 1200 W. Washington St.  
 Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: mscott@azcc.gov

Name: Robin Mitchell, Esq.  
 Attorney, Legal Division

Address: Corporation Commission  
 1200 W. Washington St.  
 Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: rmitchell@azcc.gov

Name: Bob Gray  
 Executive Consultant, Utilities Division

Address: Corporation Commission  
 1200 W. Washington St.  
 Phoenix, AZ 85007

Telephone: (602) 542-0827

Fax: (602) 542-2129

E-mail: bgray@azcc.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

A public meeting will be held on November 12, 2014, at 1:00 p.m., at the Commission's Tucson offices, 400 W. Congress, Room 222, Tucson, AZ 85701 and on November 14, 2014, at 10:00 a.m., at the Phoenix offices of the Arizona Corporation Commission located at 1200 W. Washington, Hearing Room 2, Phoenix, AZ 85007. The Hearing Division requests initial written comments be received on or before November 10, 2014, and that responsive comments be received on or before November 14, 2014. Please reference docket number RE-00000C-14-0112 on all documents.

*Arizona Administrative Register / Secretary of State*

## Notices of Proposed Rulemaking

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

Not Applicable

**13. The full text of the rules follows:****TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;  
SECURITIES REGULATION****CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES****ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF**

R14-2-1805. Distributed Renewable Energy Requirement

R14-2-1812. Compliance Reports

**ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF****R14-2-1805. Distributed Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change

**F. Any Renewable Energy Credit created by production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the Renewable Energy Credit. Such Renewable Energy Credit may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the Renewable Energy Credit, regardless of whether or not the Commission acknowledged the kWhs associated with non-utility owned Renewable Energy Credits.**

**G. The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged.**

**R14-2-1812. Compliance Reports**

- A. Beginning April 1, 2007, and every April 1st thereafter, each Affected Utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year and provides other relevant information. The Affected Utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is suitable for posting on the Commission's web site.
- B. The compliance report shall include the following information:
  - 1. The actual kWh of energy produced within its service territory and the actual kWh of energy or equivalent obtained from Eligible Renewable Energy Resources, differentiating between kWhs for which the Affected Utility owns the Renewable Energy Credits and kWhs produced in the Affected Utility's service territory for which the Affected Utility does not own the Renewable Energy Credits;
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
- C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's compliance report satisfied the requirements of these rules.

0000157664

EXHIBIT B

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

RECEIVED  
2014 NOV -3 P 4: 10  
AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED  
NOV 3 2014

DOCKETED BY 

IN THE MATTER OF THE PROPOSED  
RULEMAKING TO MODIFY THE  
RENEWABLE ENERGY STANDARD AND  
TARIFF RULES.

DOCKET NO. RE-00000C-14-0112

STAFF'S COMMENTS

ORIGINAL

The Arizona Corporation Commission ("Commission") Staff files the following comments on the proposed Renewable Energy Standard Tariff ("REST") rule revisions.

I. BACKGROUND.

The proposed rules are the culmination of several Commission proceedings that have addressed how to measure utility compliance with the REST Rules. This issue was first raised by Arizona Public Service Company ("APS") and Tucson Electric Power Company ("TEP") in their 2012 REST plans, which addressed the issues related to achieving compliance with the distributed energy ("DE") carve-out (required by A.A.C. R14-2-1805) once incentives are no longer offered. See, e.g., Docket No. E-01345A-10-0394.

A.A.C. R14-2-1804 requires every Affected Utility to serve a portion of its annual retail load with renewable energy. Under A.A.C. R14-2-1801(E), -1804, and -1805, thirty percent of an Affected Utility's renewable energy requirements must come from renewable DE. Each year, the renewable energy and the DE requirements increase by a set percentage.

Compliance with the REST Rules is measured by Renewable Energy Credits ("RECs"). The REST Rules define a REC as "the unit created to track kWh derived from an Eligible Renewable Energy Resource or kWh equivalent of Conventional Energy Resources displaced by Distributed Renewable Energy Resources." A.A.C. R14-2-1801(N). A.A.C. R14-2-1803 sets forth requirements for the creation and transfer of RECs.

Until recently, Arizona utilities acquired RECs from owners of eligible DE projects through contractual agreements. Under these agreements, customers would transfer DE RECs to the utilities

1 in exchange for REST incentives, which were used to offset part of the cost of installing DE systems.  
2 These incentives have taken the form of residential and commercial up-front incentives (“UFIs”) and  
3 commercial performance-based incentives (“PBIs”), and are funded by a REST surcharge assessed  
4 monthly to every retail electric service. UFIs were as high as \$4.00 per watt for residential DE  
5 systems in 2006, but had been entirely eliminated by 2013 for some utilities.

6 In Decision No. 72737 (January 18, 2012), the Commission noted that APS’s future ability to  
7 meet its annual DE REST requirement might be in question, due to the rapid decrease in the installed  
8 costs for solar photovoltaic (“PV”) systems and the resulting reduction in APS’s REST-funded  
9 incentives. Decision No. 72737 ordered APS to suggest possible solutions to the emerging issue in  
10 APS’s 2013 REST Plan filing.

11 APS subsequently proposed “Track and Record” in its 2013 REST filing (Docket No. E-  
12 01345A-12-0290). Under this proposal, APS would track all energy produced by DE systems that  
13 are interconnected with its system, and would then record (or count) that energy for purposes of  
14 REST compliance. TEP and UNS Electric, Inc. offered four possible solutions, which partially  
15 incorporated similar “Track and Record” proposals.<sup>1</sup>

16 In its Staff Reports on the 2013 implementation plans, Staff recommended approval of the  
17 “Track and Record” methodology for all Affected Utilities. Staff noted, however, that comments had  
18 been filed that raised concerns about the “Track and Record” proposal’s impact on REC integrity.  
19 After the Staff Report was filed, a number of parties filed comments in the APS and TEP 2013 REST  
20 dockets, opposing the “Track and Record” methodology. In a subsequent memorandum, Staff  
21 recommended a hearing on these issues because of the number and tenor of opposing comments.

22 The Commission agreed with Staff’s recommendation and convened an evidentiary hearing.  
23 Thirteen parties participated, presenting twelve witnesses over a five-day period. There were many  
24 alternatives discussed, such as requiring utilities to pay to acquire RECs, allowing utilities to obtain  
25 RECs as a condition of interconnection or net metering, reducing the REST requirement to reflect  
26 non-utility owned RECs, reintroducing up-front incentives, creating a maximum conventional energy

27 \_\_\_\_\_  
28 <sup>1</sup> Docket No. E-01933A-12-0296; Docket No. E-04204A-12-0297.

1 requirement, counting all RECs toward compliance, and monitoring non-utility owned RECs solely  
2 for informational purposes.

3 On February 26, 2014, the Commission docketed Decision No. 74365, its Opinion and Order  
4 on Track and Record and Potential Alternatives. That decision authorized each Affected Utility to  
5 request, in its next REST Implementation Plan Filing, a full permanent waiver from the requirements  
6 of A.A.C. R14-2-1805 for a period of one year, such that the annual requirement would not be rolled  
7 into the subsequent year. Under the decision, the Staff Report for each utility implementation plan  
8 would include a public interest analysis and recommendation on the requested waiver.

9 Decision No. 74365 also stated that the Commission would conduct a rulemaking in order to  
10 consider different methods for measuring utility compliance with the REST Rules. Staff  
11 subsequently opened a rulemaking docket, and then sought comments on several proposals. At an  
12 open meeting in July, the Commission directed Staff to prepare a draft Notice of Proposed  
13 Rulemaking for the Commission's consideration, which the Commission subsequently adopted in  
14 Decision No. 74753. The notice of proposed rulemaking explains the purpose of the proposed rules as  
15 follows:

16 The proposed rule changes will clarify and update how the Commission  
17 deals with renewable energy compliance and related renewable energy  
18 credits ("RECs"). The Commission's Renewable Energy Standard and  
19 Tariff ("REST") rules have not been updated since they were approved  
20 by the Commission in Decision No. 69127 (November 14, 2006).  
21 Since this decision, the renewable energy marketplace has changed  
22 dramatically. The existing REST rules require the utility to serve a  
23 growing percentage of its retail sales each year via renewable energy,  
24 with a carve-out for distributed energy ("DE"). The rules were  
25 predicated on utilities acquiring RECs to achieve compliance. In the  
26 DE market, RECs were acquired by the utility when the utility gave the  
27 entity installing the renewable energy system an incentive. In recent  
28 years, some utilities have seen their incentives eliminated as market  
conditions have changed. This led to utilities seeking guidance from  
the Commission as to how they should demonstrate compliance with  
the DE portion of the REST rules when the transaction that REC  
acquisition was predicated upon is no longer occurring.

1 **II. STAFF RECOMMENDS THAT THE COMMISSION ADOPT THE NPRM AS A**  
 2 **FINAL RULE IN ORDER TO CLEARLY ESTABLISH THE MEANS BY WHICH**  
 3 **THE COMMISSION WILL MEASURE UTILITY COMPLIANCE UNDER THE**  
 4 **REST RULES.**

5 Staff believes that the Commission's intent in this rulemaking is to clearly eliminate the  
 6 specter of double-counting. This intent is demonstrated by the following proposed amendment to  
 7 R14-2-1805(F), as set forth in the proposed rules:

8 Any Renewable Energy Credit created by production of renewable  
 9 energy which the Affected Utility does not own *shall be retained* by the  
 10 entity creating the Renewable Energy Credit. *Such Renewable Energy*  
 11 *Credit may not be considered used or extinguished by any Affected*  
 12 *Utility without approval and proper documentation from the entity*  
 13 *creating the Renewable Energy Credit, regardless of whether or not the*  
 14 *Commission acknowledged the kWhs associated with non-utility*  
 15 *owned Renewable Energy Credits.<sup>2</sup>*

16 In addition, the proposed amendment (underlined in the following quotation) to the reporting  
 17 requirements of R14-2-1812(B) also clearly eliminates any possibility of double counting. Each year,  
 18 Affected Utilities would be required to file the following information:

19 The actual kWh of energy produced within its service territory and the  
 20 actual kWh of energy or equivalent obtained from Eligible Renewable  
 21 Energy Resources, differentiating between kWhs for which the  
 22 Affected Utility owns the Renewable Energy Credits and kWhs  
 23 produced in the Affected Utility's service territory for which the  
 24 Affected Utility does not own the Renewable Energy Credits . . . .<sup>3</sup>

25 These proposed amendments plainly demonstrate that the Commission intends for the RECs to  
 26 remain with their owners unless specifically transferred.

27 Some have implied that these clear statements may be obscured by other language in the  
 28 NPRM, such as the word "acknowledge" in the proposed revisions to R14-2-1805(F) and (G). The  
 weakness with this argument is that it focuses upon the word "acknowledge" in isolation and ignores  
 the context provided by the proposed amendments as a whole. For example, in the above-quoted

<sup>2</sup> Decision No. 74753, Attachment at 1 (September 15, 2014) (emphasis added).

<sup>3</sup> Decision No. 74753, Attachment at 2 (September 15, 2014) (amending language indicated by  
 underlining).

1 amendments, it is absolutely clear that double counting is not intended. In addition, the Preamble to  
 2 the NPRM specifically states that the term "acknowledged" means that non-utility owned RECs will  
 3 be reported for informational purposes only.

4 If the Commission were to conclude that additional clarification would be desirable, Staff  
 5 suggests the following additions, which are set forth in bold type below, to the NPRM's revisions to  
 6 R14-2-1805(G):

7 The reporting of kWhs associated with Renewable Energy Credits not  
 8 owned by the utility will be acknowledged **for reporting purposes,**  
 9 **but will not be eligible for compliance with R14-2-1804 and -1805.**

10 A similar change (also set forth in bold type) could be made to the NPRM's revisions to R14-2-  
 11 1805(F):

12 Any Renewable Energy Credit created by production of renewable  
 13 energy which the Affected Utility does not own shall be retained by the  
 14 entity creating the Renewable Energy Credit. Such Renewable Energy  
 15 Credit may not be considered used or extinguished by any Affected  
 16 Utility without approval and proper documentation from the entity  
 17 creating the Renewable Energy Credit, regardless of whether or not the  
 18 Commission acknowledged **the reporting of** kWhs associated with  
 19 non-utility owned Renewable Energy Credits.

20 Finally, Staff suggests that the Commission delete the word "compliance" in three places in R14-2-  
 1812: in the heading, in the first sentence in R14-2-1812(B), and at the end of R14-2-1812(C). These  
 21 suggested changes to the NPRM are shown below:

22 R14-2-1812. **Compliance** Reports

23 .....

24 B. The **compliance** report shall include the following information:

25 .....

26 C. The Commission may consider all available information and may hold a  
 27 hearing to determine whether an Affected Utility's **compliance** report satisfies the  
 28 requirements of these rules.

1 All of these suggested changes are set forth in Exhibit A to these comments.

2       These suggested changes are intended to clarify (if the Commission believes that is necessary)  
3 that the non-utility owned RECs (or kWhs) will be reported for informational purposes only and will  
4 not be used to determine compliance with the REST Rules. Staff believes that adoption of these  
5 slight changes (as set forth in Exhibit A) would eliminate any potential for allegations of ambiguity.  
6 Adoption of the NPRM as a final rule, with these changes, should completely eliminate any question  
7 about the Commission's intent.

8  
9 **III. STAFF'S CLARIFYING MODIFICATIONS DO NOT AMOUNT TO A  
"SUBSTANTIAL CHANGE" FOR PURPOSES OF A.R.S. § 41-1025(A).**

10       The additions and other minor changes that Staff has suggested would not make the rules  
11 substantially different than that which was proposed in the NPRM. Any person whose interests  
12 would be affected by the published proposed rules has had adequate notice because Staff's suggested  
13 clarifying language does not change the extent, subject matter, or issues involved in the published  
14 rules. Further, the effects of the clarifications do not differ from the effects of the published proposed  
15 rules. In addition, parties were given further notice of these clarifications through the preamble to the  
16 proposed rules that was published by the Secretary of State.

17       For example, deleting the word "Compliance" from "Compliance Reports" is not a substantial  
18 change. This modification merely reflects that the purpose of the reports should be consistent with  
19 the published proposed rules. Similarly, clarifying that non-utility owned RECs will not be counted  
20 toward utility REST compliance does not change the effects of the published proposed rules; instead,  
21 this language simply adds clarity consistent with the overall effects of the proposed rules. Thus,  
22 under the criteria set forth in A.R.S. § 41-1025(A), Staff's clarifying language does not constitute a  
23 substantial change to the proposed rules, and the Commission may adopt these modifications without  
24 delaying the rulemaking process.

25 ...

26 ...

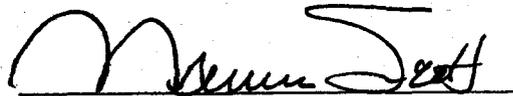
27 ...

28

1 IV. CONCLUSION.

2 For the reasons stated above, Staff recommends that the Commission enact the NPRM as a  
3 final rule, with the clarifying additions and modifications set forth in Exhibit A.

4 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of November, 2014.

5  
6 

7 Maureen A. Scott, Senior Staff Counsel  
8 Robin Mitchell, Staff Counsel  
9 Janet L. Wagner, Assistant Chief Counsel  
10 Legal Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007  
14 (602) 542-3402

15 Original and thirteen (13) copies  
16 of the foregoing filed this  
17 3<sup>rd</sup> day of November 2014 with:

18 Docket Control  
19 Arizona Corporation Commission  
20 1200 West Washington Street  
21 Phoenix, Arizona 85007

22 Copy of the foregoing emailed  
23 this 3<sup>rd</sup> day of November, 2014 and  
24 mailed on the 4<sup>th</sup> day of November, 2014  
25 to:

26 Garry D. Hays  
27 Law Offices of Garry D. Hays, PC  
28 1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
[ghays@lawgdh.com](mailto:ghays@lawgdh.com)  
Attorney for Arizona Solar Deployment  
Alliance

John Wallace  
GCSECA  
2210 South Priest Drive  
Tempe, Arizona 85282  
[jwallace@gcseca.coop](mailto:jwallace@gcseca.coop)

Michael A. Curtis  
William P. Sullivan  
Curtis, Goodwin, Sullivan,  
Udall & Schwab, PLC  
501 East Thomas Road  
Phoenix, Arizona 85012  
[Mcurtis401@aol.com](mailto:Mcurtis401@aol.com)  
[Wsullivan@cgsuslaw.com](mailto:Wsullivan@cgsuslaw.com)  
Attorneys for Mohave Electric Cooperative,  
Inc. and Navopache Electric Cooperative, Inc.

1 Peggy Gillman  
 Manager of Public Affairs and  
 2 Energy Services  
 Mohave Electric Cooperative, Inc.  
 3 Post Office Box 1045  
 Bullhead City, Arizona 86430  
 4 [pgillman@mohaveelectric.com](mailto:pgillman@mohaveelectric.com)

5 Tyler Carlson  
 Chief Operating Officer  
 6 Mohave Electric Cooperative, Incorporated  
 Post Office Box 1045  
 7 Bullhead City, Arizona 86430  
[tcarlson@mohaveelectric.com](mailto:tcarlson@mohaveelectric.com)

8 Charles Moore  
 Navopache Electric Cooperative, Inc.  
 9 1878 West White Mountain Boulevard  
 Lakeside, Arizona 85929  
 10 [cmoore@navopache.org](mailto:cmoore@navopache.org)

11 Court S. Rich  
 12 Rose Law Group pc  
 7144 East Stetson Drive  
 13 Suite 300  
 Scottsdale, Arizona 85251  
 14 [crich@roselawgroup.com](mailto:crich@roselawgroup.com)

15 C. Webb Crockett  
 Patrick J. Black  
 16 Fennemore Craig, PC  
 2394 East Camelback Road  
 17 Suite 600  
 Phoenix, Arizona 85016-3429  
 18 [wcrockett@fclaw.com](mailto:wcrockett@fclaw.com)  
[pblack@fclaw.com](mailto:pblack@fclaw.com)

19 Bradley Carroll  
 20 88 East Broadway Boulevard, MS HQE910  
 Post Office Box 711  
 21 Tucson, Arizona 85702  
[bcarroll@tep.com](mailto:bcarroll@tep.com)

22 Michael W. Patten  
 23 Roshka DeWulf & Patten, PLC  
 400 East Van Buren Street, Suite 800  
 24 Phoenix, Arizona 85004  
[mpatten@rdp-law.com](mailto:mpatten@rdp-law.com)

25  
 26  
 27  
 28

Deborah R. Scott  
 Thomas L. Loquvam  
 Arizona Public Service Company  
 400 North 5<sup>th</sup> Street, MS 8695  
 Phoenix, Arizona 85004  
[Deb.Scott@pinnaclewest.com](mailto:Deb.Scott@pinnaclewest.com)  
[Thomas.Loquvam@pinnaclewest.com](mailto:Thomas.Loquvam@pinnaclewest.com)

Gregory L. Bernosky  
 Arizona Public Service Company  
 400 North 5<sup>th</sup> Street, MS 9708  
 Phoenix, Arizona 85004  
[Gregory.Bernosky@aps.com](mailto:Gregory.Bernosky@aps.com)

Anna Lands  
 Cascabel Working Group  
 6520 Casabel Road  
 Benson, Arizona 85602

Lawrence V. Robertson, Jr.  
 Post Office Box 1448  
 Tubac, Arizona 85646  
[tubaclawyer@aol.com](mailto:tubaclawyer@aol.com)

Edward Burgess  
 Kris Mayes Law Firm  
 1 East Camelback Road, Suite 550  
 Phoenix, Arizona 85012  
[eburgess@krismayeslaw.com](mailto:eburgess@krismayeslaw.com)

Ruel Rogers  
 The Morenci Water & Electric Company  
 Post Office Box 68  
 Morenci, Arizona 85540  
[Ruel.RogersJr@fmi.com](mailto:Ruel.RogersJr@fmi.com)

Creden Huber  
 Sulphur Springs Valley Electric Cooperative  
 350 North Haskell Avenue  
 Willcox, Arizona 85643  
[credenh@SSVEC.com](mailto:credenh@SSVEC.com)

Kirk Gray  
 Graham County Electric Cooperative  
 Post Office Drawer B  
 Pima, Arizona 85543  
[kgray@gce.coop](mailto:kgray@gce.coop)

Karen Cathers  
 Trico Electric Cooperative, Inc.  
 Post Office Box 930  
 Marana, Arizona 85653-0930  
[kcathers@trico.coop](mailto:kcathers@trico.coop)

1 Roy Archer  
Ajo Improvement Company  
2 Post Office Drawer 9  
Ajo, Arizona 85321  
3 [roy\\_archer@fmi.com](mailto:roy_archer@fmi.com)

4 Steve Lunt  
Duncan Valley Electric Cooperative  
5 Post Office Box 440  
Duncan, Arizona 85534  
6 [stevel@dvec.org](mailto:stevel@dvec.org)

7 Annie Lappe  
Rick Gilliam  
8 The Vote Solar Initiative  
1120 Pearl Street, Suite 200  
9 Boulder, Colorado 80302  
[annie@votesolar.org](mailto:annie@votesolar.org)  
10 [rick@votesolar.org](mailto:rick@votesolar.org)

11 Timothy Hogan  
Arizona Center for Law in the Public Interest  
12 202 East McDowell Road, Suite 153  
Phoenix, Arizona 85004  
13 [thogan@aclpi.org](mailto:thogan@aclpi.org)

14 Giancarlo Estrada  
Kamper, Estrada & Simmons  
15 3030 North 3<sup>rd</sup> Street, Suite 200  
Phoenix, Arizona 85012  
16 [gestrada@lawphx.com](mailto:gestrada@lawphx.com)

17 David Berry  
Western Resource Advocates  
18 Post Office Box 1064  
Scottsdale, Arizona 85252-1064  
19 [david.berry@westernresources.org](mailto:david.berry@westernresources.org)

20 Kevin Koch  
612 North Seventh Avenue  
21 Tucson, Arizona 85705

22 Daniel Pozefsky  
Residential Utility Consumer Office  
23 1110 West Washington, Suite 220  
Phoenix, Arizona 85007  
24 [dpozefsky@azruco.gov](mailto:dpozefsky@azruco.gov)

25 Michael Neary  
Arizona Solar Energy Industries Association  
26 111 West Renee Drive  
Phoenix, Arizona 85027  
27 [mneary@arizonasolarindustry.org](mailto:mneary@arizonasolarindustry.org)

28

Craig Marks  
Craig A. Marks, PLC  
10645 North Tatum Boulevard  
Suite 200-676  
Phoenix, Arizona 85028  
[Craig.Marks@azbar.org](mailto:Craig.Marks@azbar.org)

Kyle J. Smith, General Attorney  
Office of the Judge Advocate General  
U.S. Army Legal Services  
9275 Gunston Road  
Fort Belvoir, Virginia 22060-5546  
[kyle.j.smith124.civ@mail.mil](mailto:kyle.j.smith124.civ@mail.mil)

Karen S. White, Staff Attorney  
U.S. Air Force Utility Law Field Support  
Center  
AFLOA/JACL-ULFSC  
139 Barnes Drive  
Tyndall AFB, Florida 32403  
[karen.white@tyndall.af.mil](mailto:karen.white@tyndall.af.mil)

Christopher Thomas  
Fred E. Breedlove III  
Squire Sanders (US) LLP  
1 East Washington, 27<sup>th</sup> Floor  
Phoenix, Arizona 85004  
[christopher.d.thomas@squiresanders.com](mailto:christopher.d.thomas@squiresanders.com)  
[fred.breedlove@squiresanders.com](mailto:fred.breedlove@squiresanders.com)

Scott S. Wakefield  
Ridenour, Hienton & Lewis PLLC  
201 North Central Avenue, Suite 3300  
Phoenix, Arizona 85004-1052  
[swakefield@rhlfirm.com](mailto:swakefield@rhlfirm.com)

Rick Umoff  
Solar Energy Industries Association  
505 9th Street NW, Suite 800  
Washington, DC 20004  
[RUmoff@seia.org](mailto:RUmoff@seia.org)

Robin Quarrier  
Jennifer Martin  
Center for Resource Solutions  
1012 Torrey Avenue  
San Francisco, California 94129  
[robin@resource-solutions.org](mailto:robin@resource-solutions.org)  
[jennifer@resource-solutions.org](mailto:jennifer@resource-solutions.org)

1 Ken Baker  
Wal-Mart Stores, Inc.  
2 2011 S.E. 10th Street  
Bentonville, Arkansas 72716-0550  
3 [ken.baker@wal-mart.com](mailto:ken.baker@wal-mart.com)

4 Kerry Hattevik  
Director of West Regulatory and Market  
5 Affairs  
NextEra Energy Resources, LLC  
6 829 Arlington Boulevard  
El Cerrito, California 94530  
7 [kerry.hattevik@nexteraenergy.com](mailto:kerry.hattevik@nexteraenergy.com)

8 Douglas V. Fant  
Law Offices of Douglas V. Fant  
9 3655 West Anthem Way  
Suite A-109, PMB 411  
10 Anthem, Arizona 85086  
[dfantlaw@earthlink.net](mailto:dfantlaw@earthlink.net)

11 Kevin C. Higgins, Principal  
12 Energy Strategies, LLC  
215 South State Street  
13 Suite 200  
Salt Lake City, Utah 84111  
14 [khiggins@energystrat.com](mailto:khiggins@energystrat.com)

15 Maja Wessels  
First Solar  
16 350 West Washington Street  
Tempe, Arizona 85281

17 Joe King  
18 Arizona Electric Power Cooperative  
Post Office Box 670  
19 Benson, Arizona 85602  
[jking@ssw.coop](mailto:jking@ssw.coop)

20 Christopher Martinez  
21 900 North Gold Avenue  
Post Office Box 631  
22 Deming, New Mexico 88031-0631  
[chrism@col-coop.com](mailto:chrism@col-coop.com)

23 LaDel Laub  
24 Dixie Escalante Rural Electric Association  
71 East Highway 56  
25 Beryl, Utah 84714  
[ladell@dixiepower.com](mailto:ladell@dixiepower.com)

Dan McClendon  
Garkane Energy Cooperative  
Post Office Box 465  
Loa, Utah 84747  
[dan@garkaneenergy.com](mailto:dan@garkaneenergy.com)

Greg Bass  
Noble Americas Energy Solutions  
401 West A Street, Suite 500  
San Diego, California 92101-3017  
[gbass@noblesolutions.com](mailto:gbass@noblesolutions.com)

Laura Palm Belmar  
Morgan Stine  
Green Earth Energy & Environmental, Inc.  
2370 West SR 89A  
Suite 11 PMB 430  
Sedona, Arizona 86336  
[laura@greeneearthenergyinc.com](mailto:laura@greeneearthenergyinc.com)  
[morgan@greeneearthenergyinc.com](mailto:morgan@greeneearthenergyinc.com)

Patrick Serfass  
Renewable Energy Markets Association  
1211 Connecticut Avenue NW, Suite 600  
Washington, DC 20036-2701  
[pserfass@ttcorp.com](mailto:pserfass@ttcorp.com)



**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;  
SECURITIES REGULATION  
CHAPTER 2. CORPORATION COMMISSION  
FIXED UTILITIES**

**ARTICLE 18. RENEWABLE ENERGY STANDARD AND TARIFF**

**R14-2-1801. Definitions**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change

**R14-2-1802. Eligible Renewable Energy Resources**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
    - a. No change
    - b. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change
    - a. No change
    - b. No change
    - c. No change
  - 10. No change
  - 11. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
  - 9. No change

- 10. No change
- 11. No change
- 12. No change
- C. No change
- D. No change

**R14-2-1803. Renewable Energy Credits**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change

**R14-2-1804. Annual Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change

**R14-2-1805. Distributed Renewable Energy Requirement**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. Any Renewable Energy Credit created by production of renewable energy which the Affected Utility does not own shall be retained by the entity creating the Renewable Energy Credit. Such Renewable Energy Credit may not be considered used or extinguished by any Affected Utility without approval and proper documentation from the entity creating the Renewable Energy Credit, regardless of whether or not the Commission acknowledged the reporting of the kWhs associated with non-utility owned Renewable Energy Credits.
- G. The reporting of kWhs associated with Renewable Energy Credits not owned by the utility will be acknowledged for reporting purposes, but will not be eligible for compliance with R14-2-1804 and -1805.

**R14-2-1806. Extra Credit Multipliers**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- G. No change

**R14-2-1807. Manufacturing Partial Credit**

- A. No change
- B. No change
- C. No change

**R14-2-1808. Tariff**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change
- D. No change
- E. No change

**R14-2-1809. Customer Self-Directed Renewable Energy Option**

- A. No change
- B. No change
- C. No change

**R14-2-1810. Uniform Credit Purchase Program**

- A. No change
- B. No change

**R14-2-1811. Net Metering and Interconnection Standards**

No change

**R14-2-1812. Compliance Reports**

- A. Beginning April 1, 2007, and every April 1st thereafter, each Affected Utility shall file with Docket Control a report that describes its compliance with the requirements of these rules for the previous calendar year and provides other relevant information. The Affected Utility shall also transmit to the Director of the Utilities Division an electronic copy of this report that is

suitable for posting on the Commission's web site.

- B. The compliance report shall include the following information:
  - 1. The actual kWh of energy produced within its service territory and the actual kWh of energy or equivalent obtained from Eligible Renewable Energy Resources, differentiating between kWhs for which the Affected Utility owns the Renewable Energy Credits and kWhs produced in the Affected Utility's service territory for which the Affected Utility does not own the Renewable Energy Credits;
    - 2. No change
    - 3. No change
    - 4. No change
    - 5. No change
    - 6. No change
- C. The Commission may consider all available information and may hold a hearing to determine whether an Affected Utility's compliance report satisfied the requirements of these rules.

**R14-2-1813. Implementation Plans**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- C. No change

**R14-2-1814. Electric Power Cooperatives**

- A. No change
- B. No change

**R14-2-1815. Enforcement and Penalties**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
- C. No change
- D. No change

**R14-2-1816. Waiver from the Provisions of this Article**

- A. No change
- B. No change
- C. No change

**Appendix A. Sample Tariff**

No change

EXHIBIT C

ORIGINAL

0000158012

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COMMISSIONERS**

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

Arizona Corporation Commission

DOCKETED

NOV 13 2014

2014 NOV 13 P 3 38

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY



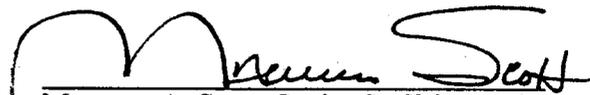
OPENED FOR THE PURPOSE OF  
COMMENCING A PROPOSED  
RULEMAKING ON THE RENEWABLE  
ENERGY STANDARD ("RES") RULES AS  
DIRECTED IN ARIZONA CORPORATION  
COMMISSION DECISION NO. 74365.

DOCKET NO. RE-00000C-14-0112

STAFF'S NOTICE OF FILING

At the Tucson Public Comment session on the proposed REST Rule changes on November 12, 2014, Staff was asked by the Administrative Law Judge ("ALJ") whether it had heard from the Center of Resource Solutions ("CRS") on the proposed revisions. Staff indicated that it had received an email from CRS regarding the changes and that Staff would docket that email for informational purposes. Staff has attached the email from CRS for the Commission's and ALJ's consideration.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of November 2014.



Maureen A. Scott, Senior Staff Counsel  
Robin R. Mitchell, Attorney  
Robert Geake, Attorney  
Janet F. Wagner, Assistant Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

Original and thirteen (13) copies  
of the foregoing filed this  
13<sup>th</sup> day of November 2014 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

1 Copy of the foregoing **emailed** this  
13<sup>th</sup> day of November 2014 to:

2 Copy of the foregoing **mailed**  
3 the 14<sup>th</sup> day of November 2014 to:

4 Garry D. Hays  
Law Offices of Garry D. Hays, PC  
5 1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
6 [ghays@lawgdh.com](mailto:ghays@lawgdh.com)  
Attorney for Arizona Solar Deployment  
7 Alliance

8 John Wallace  
GCSECA  
9 2210 South Priest Drive  
Tempe, Arizona 85282  
10 [jwallace@gcseca.coop](mailto:jwallace@gcseca.coop)

11 Michael A. Curtis  
William P. Sullivan  
12 Curtis, Goodwin, Sullivan,  
Udall & Schwab, PLC  
13 501 East Thomas Road  
Phoenix, Arizona 85012  
14 [Mcurtis401@aol.com](mailto:Mcurtis401@aol.com)  
[Wsullivan@cgsuslaw.com](mailto:Wsullivan@cgsuslaw.com)  
15 Attorneys for Mohave Electric Cooperative,  
Inc. and Navopache Electric Cooperative, Inc.

16 Peggy Gillman  
17 Manager of Public Affairs and  
Energy Services  
18 Mohave Electric Cooperative, Inc.  
Post Office Box 1045  
19 Bullhead City, Arizona 86430  
[pgillman@mohaveelectric.com](mailto:pgillman@mohaveelectric.com)

20 Tyler Carlson  
21 Chief Operating Officer  
Mohave Electric Cooperative, Incorporated  
22 Post Office Box 1045  
Bullhead City, Arizona 86430  
23 [tcarlson@mohaveelectric.com](mailto:tcarlson@mohaveelectric.com)

24 Charles Moore  
Navopache Electric Cooperative, Inc.  
25 1878 West White Mountain Boulevard  
Lakeside, Arizona 85929  
26 [cmoore@navopache.org](mailto:cmoore@navopache.org)

Court S. Rich  
Rose Law Group pc  
7144 East Stetson Drive  
Suite 300  
Scottsdale, Arizona 85251  
[crich@roselawgroup.com](mailto:crich@roselawgroup.com)

C. Webb Crockett  
Patrick J. Black  
Fennemore Craig, PC  
2394 East Camelback Road  
Suite 600  
Phoenix, Arizona 85016-3429  
[wcrockett@fclaw.com](mailto:wcrockett@fclaw.com)  
[pblack@fclaw.com](mailto:pblack@fclaw.com)

Bradley Carroll  
88 East Broadway Boulevard, MS HQE910  
Post Office Box 711  
Tucson, Arizona 85702  
[bcarroll@tep.com](mailto:bcarroll@tep.com)

Michael W. Patten  
Roshka DeWulf & Patten, PLC  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004  
[mpatten@rdp-law.com](mailto:mpatten@rdp-law.com)

Deborah R. Scott  
Thomas L. Loquvam  
Arizona Public Service Company  
400 North 5<sup>th</sup> Street, MS 8695  
Phoenix, Arizona 85004  
[Deb.Scott@pinnaclewest.com](mailto:Deb.Scott@pinnaclewest.com)  
[Thomas.Loquvam@pinnaclewest.com](mailto:Thomas.Loquvam@pinnaclewest.com)

Gregory L. Bernosky  
Arizona Public Service Company  
400 North 5<sup>th</sup> Street, MS 9708  
Phoenix, Arizona 85004  
[Gregory.Bernosky@aps.com](mailto:Gregory.Bernosky@aps.com)

Anna Lands  
Casabel Working Group  
6520 Casabel Road  
Benson, Arizona 85602  
[healing@rnsmtc.com](mailto:healing@rnsmtc.com)

1	Lawrence V. Robertson, Jr. Post Office Box 1448 Tubac, Arizona 85646 <a href="mailto:tubaclawyer@aol.com">tubaclawyer@aol.com</a>	Timothy Hogan Arizona Center for Law in the Public Interest 202 East McDowell Road, Suite 153 Phoenix, Arizona 85004 <a href="mailto:thogan@aclpi.org">thogan@aclpi.org</a>
2	Edward Burgess Kris Mayes Law Firm 1 East Camelback Road, Suite 550 Phoenix, Arizona 85012 <a href="mailto:eburgess@krismayeslaw.com">eburgess@krismayeslaw.com</a>	Giancarlo Estrada Kamper, Estrada & Simmons 3030 North 3 <sup>rd</sup> Street, Suite 200 Phoenix, Arizona 85012 <a href="mailto:gestrada@lawphx.com">gestrada@lawphx.com</a>
3	Ruel Rogers The Morenci Water & Electric Company Post Office Box 68 Morenci, Arizona 85540 <a href="mailto:Ruel_RogersJr@fmi.com">Ruel_RogersJr@fmi.com</a>	David Berry Western Resource Advocates Post Office Box 1064 Scottsdale, Arizona 85252-1064 <a href="mailto:david.berry@westernresources.org">david.berry@westernresources.org</a>
4	Creden Huber Sulphur Springs Valley Electric Cooperative 350 North Haskell Avenue Willcox, Arizona 85643 <a href="mailto:credenh@SSVEC.com">credenh@SSVEC.com</a>	Kevin Koch 612 North Seventh Avenue Tucson, Arizona 85705
5	Kirk Gray Graham County Electric Cooperative Post Office Drawer B Pima, Arizona 85543 <a href="mailto:kgray@gce.coop">kgray@gce.coop</a>	Daniel Pozefsky Residential Utility Consumer Office 1110 West Washington, Suite 220 Phoenix, Arizona 85007 <a href="mailto:dpozefsky@azruco.gov">dpozefsky@azruco.gov</a>
6	Karen Cathers Trico Electric Cooperative, Inc. Post Office Box 930 Marana, Arizona 85653-0930 <a href="mailto:kcathers@trico.coop">kcathers@trico.coop</a>	Michael Neary Arizona Solar Energy Industries Association 111 West Renee Drive Phoenix, Arizona 85027 <a href="mailto:mneary@arizonasolarindustry.org">mneary@arizonasolarindustry.org</a>
7	Roy Archer Ajo Improvement Company Post Office Drawer 9 Ajo, Arizona 85321 <a href="mailto:roy_archer@fmi.com">roy_archer@fmi.com</a>	Craig Marks Craig A. Marks, PLC 10645 North Tatum Boulevard Suite 200-676 Phoenix, Arizona 85028 <a href="mailto:Craig.Marks@azbar.org">Craig.Marks@azbar.org</a>
8	Steve Lunt Duncan Valley Electric Cooperative Post Office Box 440 Duncan, Arizona 85534 <a href="mailto:stewel@dvec.org">stewel@dvec.org</a>	Kyle J. Smith, General Attorney Office of the Judge Advocate General U.S. Army Legal Services 9275 Gunston Road Fort Belvoir, Virginia 22060-5546 <a href="mailto:kyle.j.smith124.civ@mail.mil">kyle.j.smith124.civ@mail.mil</a>
9	Annie Lappe Rick Gilliam The Vote Solar Initiative 1120 Pearl Street, Suite 200 Boulder, Colorado 80302 <a href="mailto:annie@votesolar.org">annie@votesolar.org</a> <a href="mailto:rick@votesolar.org">rick@votesolar.org</a>	
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Karen S. White, Staff Attorney  
 U.S. Air Force Utility Law Field Support  
 2 Center  
 AFLOA/JACL-ULFSC  
 3 139 Barnes Drive  
 Tyndall AFB, Florida 32403  
 4 [karen.white@tyndall.af.mil](mailto:karen.white@tyndall.af.mil)

5 Christopher Thomas  
 Fred E. Breedlove III  
 6 Squire Sanders (US) LLP  
 1 East Washington, 27<sup>th</sup> Floor  
 7 Phoenix, Arizona 85004  
[christopher.d.thomas@squiresanders.com](mailto:christopher.d.thomas@squiresanders.com)  
 8 [fred.breedlove@squiresanders.com](mailto:fred.breedlove@squiresanders.com)

9 Scott S. Wakefield  
 Ridenour, Hienton & Lewis PLLC  
 10 201 North Central Avenue, Suite 3300  
 Phoenix, Arizona 85004-1052  
 11 [swakefield@rhlfirm.com](mailto:swakefield@rhlfirm.com)

12 Rick Umoff  
 Solar Energy Industries Association  
 13 505 9th Street NW, Suite 800  
 Washington, DC 20004  
 14 [RUmoff@seia.org](mailto:RUmoff@seia.org)

15 Robin Quarrier  
 Jennifer Martin  
 16 Center for Resource Solutions  
 1012 Torrey Avenue  
 17 San Francisco, California 94129  
[robin@resource-solutions.org](mailto:robin@resource-solutions.org)  
 18 [jennifer@resource-solutions.org](mailto:jennifer@resource-solutions.org)

19 Ken Baker  
 Wal-Mart Stores, Inc.  
 20 2011 S.E. 10th Street  
 Bentonville, Arkansas 72716-0550  
 21 [ken.baker@wal-mart.com](mailto:ken.baker@wal-mart.com)

22 Kerry Hattevik  
 Director of West Regulatory and Market  
 23 Affairs  
 NextEra Energy Resources, LLC  
 24 829 Arlington Boulevard  
 El Cerrito, California 94530  
 25 [kerry.hattevik@nexteraenergy.com](mailto:kerry.hattevik@nexteraenergy.com)

26

27

28

Douglas V. Fant  
 Law Offices of Douglas V. Fant  
 3655 West Anthem Way  
 Suite A-109, PMB 411  
 Anthem, Arizona 85086  
[dfantlaw@earthlink.net](mailto:dfantlaw@earthlink.net)

Kevin C. Higgins, Principal  
 Energy Strategies, LLC  
 215 South State Street  
 Suite 200  
 Salt Lake City, Utah 84111  
[khiggins@energystrat.com](mailto:khiggins@energystrat.com)

Maja Wessels  
 First Solar  
 350 West Washington Street  
 Tempe, Arizona 85281  
[mwessels@firstsolar.com](mailto:mwessels@firstsolar.com)

Joe King  
 Arizona Electric Power Cooperative  
 Post Office Box 670  
 Benson, Arizona 85602  
[jking@ssw.coop](mailto:jking@ssw.coop)

Christopher Martinez  
 900 North Gold Avenue  
 Post Office Box 631  
 Deming, New Mexico 88031-0631  
[chrism@col-coop.com](mailto:chrism@col-coop.com)

LaDel Laub  
 Dixie Escalante Rural Electric Association  
 71 East Highway 56  
 Beryl, Utah 84714  
[ladell@dixiepower.com](mailto:ladell@dixiepower.com)

Dan McClendon  
 Garkane Energy Cooperative  
 Post Office Box 465  
 Loa, Utah 84747  
[dan@garkaneenergy.com](mailto:dan@garkaneenergy.com)

Greg Bass  
 Noble Americas Energy Solutions  
 401 West A Street, Suite 500  
 San Diego, California 92101-3017  
[gbass@noblesolutions.com](mailto:gbass@noblesolutions.com)

1 Laura Palm Belmar  
Morgan Stine  
2 Green Earth Energy & Environmental, Inc.  
2370 West SR 89A  
3 Suite 11 PMB 430  
Sedona, Arizona 86336  
4 [laura@greeneearthenergyinc.com](mailto:laura@greeneearthenergyinc.com)  
[morgan@greeneearthenergyinc.com](mailto:morgan@greeneearthenergyinc.com)

5  
Patrick Serfass  
6 Renewable Energy Markets Association  
1211 Connecticut Avenue NW, Suite 600  
7 Washington, DC 20036-2701  
[pserfass@ttcorp.com](mailto:pserfass@ttcorp.com)

8  
9  
10 Kayla Christine

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Maureen Scott**

---

**From:** Robin Quarrier <robin@resource-solutions.org>  
**Sent:** Monday, November 10, 2014 11:21 AM  
**To:** Maureen Scott; Bob Gray  
**Cc:** Jennifer Martin  
**Subject:** Nov 3 Staff Proposed Changes

Dear Bob and Maureen,

We have reviewed the Staff Comments filed on November 3<sup>rd</sup>. We don't have the resources to respond formally but wanted to respond to your request for our initial feedback on the proposal. As we read the proposal, the proposed language changes would weaken the REST, which we do not support. However, the REST language, amended by the proposed staff clarifications, particularly differentiating between kWh for which the utility owns the RECs and kWh produced in the service territory for which the utility does not own the RECs, the clarification that the kWh where the RECs are not owned by the utility are not eligible for compliance with the REST, and the removal of the word "compliance" in the titles of sections containing information about kWh where the RECs not owned by the utility, lead us to believe that the resulting policy would not lead to double counting. We cannot make a conclusive determination without seeing the final language and how it is implemented, but this is our current understanding. The language in section R14-2-1805(F) has little or no bearing on the status of the RECs under Green-e Energy.

Even if this language is adopted, a future statement or action by the Commission contradicting the clarified intent that the kWh associated with RECs not owned by the utility are not eligible for compliance, could render the RECs ineligible for Green-e Energy. For example, if the Commission were to count up all the kWh regardless of REC ownership and use that information to determine REST compliance, the associated RECs will likely be ineligible for Green-e Energy due to double counting.

Regards,

Robin

Robin Quarrier  
Chief Counsel  
Center for Resource Solutions  
415-568-4285

**EXHIBIT D  
MEMORANDUM**

0000158224

TO: Docket Control Center

FROM: Steven M. Olea  
Director  
Utilities Division

*EA for SMO*

**ORIGINAL**

DATE: November 20, 2014

RE: STAFF REPORT REGARDING THE PROPOSED RULEMAKING TO MODIFY  
THE RENEWABLE ENERGY STANDARD AND TARIFF RULES  
(DOCKET NO. RE-00000C-14-0112)

Attached is the Staff Report regarding (1) Utilities Division's summary of written and oral comments received after the October 10, 2014 publication in the Arizona Administrative Register of the Notice of Proposed Rulemaking to Modify the Renewable Energy Standard and Tariff Rules and the Utilities Division's responses to those comments, and (2) Staff's response regarding any updating that is necessary to the Economic, Small Business, and Consumer Impact Statement. Staff recommends approval of the Proposed Rulemaking with or without Staff's November 3, 2014 optional wording clarifications.

SMO:RGG:tdp/JFW

Originator: Robert Gray

Arizona Corporation Commission  
**DOCKETED**  
NOV 20 2014

DOCKETED BY 

RECEIVED  
2014 NOV 20 P 4: 16  
ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD  
AND TARIFF RULES**

**DOCKET NO. RE-00000C-14-0112**

**NOVEMBER 20, 2014**

DECISION NO. \_\_\_\_\_

**STAFF ACKNOWLEDGMENT**

The Staff Report for Docket No. RE-00000C-14-0112, was the responsibility of the Staff member listed below.

A handwritten signature in black ink, appearing to read 'Robert Gray', with a long horizontal flourish extending to the right.

Robert Gray  
Executive Consultant

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION .....	1
SUMMARY OF WRITTEN AND ORAL COMMENTS AND STAFF RESPONSES TO COMMENTS.....	2
DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT .....	14

Arizona Corporation Commission  
Docket No. RE-00000C-14-0112  
Page 1

## INTRODUCTION

On March 31, 2014, Commission Staff ("Staff") filed a memo with docket control to open generic docket for the purpose of commencing a proposed rulemaking on the Renewable Energy Standard ("RES") rules as directed in Arizona Corporation Commission Decision No. 74365. On February 26, 2014, the ACC issued Decision No. 74365. In that Decision, the Commission ordered:

"that the REST rules shall be opened for the purpose of developing a new methodology for utilities to comply with renewable energy requirements that is not based solely on the use of RECs...and that Staff shall, after consultation with utilities, interveners in this docket, and other interested stakeholders, file proposed new rules no later than April 15, 2014 with the Commission to address a Notice of Proposed Rulemaking on this matter at its May 2014 Open Meeting or as soon as is practical after that date." (page 55, lines 7-13)

On April 4, 2014 Staff filed its Notice of Compliance Filing Per Decision No. 74365, in which Staff provided seven options for the Commission to consider. On July 22, 2014, the Commission directed Staff to move forward with preparing draft RES rules. On October 10, 2014, the Notice of Proposed Rulemaking was published in the Arizona Administrative Register.

In accordance with the Administrative Procedure Act, A.R.S. 41-1001 et seq., and Administrative Law Judge's directive to Staff at the November 10 and 12, 2014 oral proceedings held on this proposed rulemaking, Staff is filing its summary of written and oral comments received since the October 10, 2014 publication of the Notice of Proposed Rulemaking, along with Staff's responses thereto. Staff is also filing its discussion of the Economic, Small Business, and Consumer Impact Statement.

Arizona Corporation Commission  
 Docket No. RE-00000C-14-0112  
 Page 2

**SUMMARY OF WRITTEN AND ORAL COMMENTS AND STAFF RESPONSES TO COMMENTS**

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
Tucson Electric Power Company ("TEP") and UNS Electric, Inc. ("UNS")	TEP and UNS have reviewed the proposed NOPR revisions to the REST Rules and Staff's Comments. The Companies have no further comments on the proposed revisions at this time.	No change is needed in response to this comment.
The Alliance for Solar Choice ("TASC")	TASC supports comments of Solar Energy Industry Association ("SEIA"). SEIA did not file any responsive comments, so the comments that TASC supports are SEIA's initial comments filed November 10, 2014.	See response to SEIA comments. No change is needed in response to this comment.
Arizona Public Service Company ("APS")	<p>[initial comments filed November 10, 2014]</p> <p>Supports the proposed NOPR modifications to the REST Rules as they provide an effective solution to a lingering issue-compliance within an evolving renewable environment. APS is analyzing Staff's comments and will respond, if necessary, in responsive comments on November 14.</p> <p>APS has asked the Commission for guidance on how to demonstrate compliance when it no longer purchases RECs with direct cash incentives.</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>See discussion of this issue in regard to APS' responsive comments.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>The NOPR’s proposed revisions provide a reasonable framework for considering compliance when direct cash incentives are no longer available.</p> <p>APS supports the NOPR proposed rule changes because they provide a reasonable post-incentive path to compliance, preserve the existing REST compliance and DE carve-out requirement, and resolve perceived “double-counting” of RECs without imposing additional costs.</p> <p>Any attempt to factor in the impacts of EPA’s Clean Power Plan (“CPP”) is premature.</p> <p>[responsive comments filed November 14, 2014]                      APS believed that the purpose of the October 10, 2014 NOPR was to establish a means for the Commission to determine compliance with the REST rules in a manner that did not require the utilities to acquire, then retire, DE RECs.                      Although APS reaffirmed its support for the NOPR, APS</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff agrees that it is premature to make changes to the REST rules based on EPA’s proposed CPP. No change is needed in response to this comment.</p> <p>Under the existing REST rules, the NOPR modifications, and Staff’s November 3<sup>rd</sup> optional wording clarifications, the only way to demonstrate compliance under the REST rules is via RECs. There is no change in how an affected utility demonstrates compliance. However, under both the NOPR modifications and Staff’s November 3<sup>rd</sup> filing, an affected utility is provided with additional</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>is struggling to understand the impact of Staff's November 3, 2014 comments, and to understand how APS would establish compliance under the new changes. It appears that Staff's modifications remove alternative means to demonstrate compliance by eliminating the nexus between compliance with the REST rules and the Commission's consideration of all available information. APS perceived in the NOPR preamble a flexibility to determine compliance, but, per Staff's November 3 comments, it appears that all is left for the Commission to determine compliance is whether the utility has sufficient utility-owned RECs to meet the annual REST's quantitative requirements. If so, utilities will have to purchase RECs from third parties, resulting in a negative impact on customers. In the alternative, utilities may choose to request waivers instead-an outcome that challenges the very purpose of the rules. Staff's November 3 comments introduce uncertainty, making it difficult to determine compliance and leaving the fundamental question unanswered. APS is open to understanding more about</p>	<p>clarity in how it can demonstrate that it is not out of compliance. Namely the Commission would formally recognize that it may consider all available information in considering a waiver request from an affected utility, while simultaneously ensuring that the integrity of RECs is maintained. Staff's November 3<sup>rd</sup> revisions do not change this path to demonstrating an affected utility is not out of compliance. Thus an affected utility is not limited to the option of expending additional ratepayer funds to acquire RECs, as it has the alternative of seeking a waiver of the REST rules. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>how utilities can establish compliance under Staff's revisions, but, for now, it appears the only two compliance options are acquiring RECs or obtaining a waiver. If so, the Commission should reject the Nov. 3 revisions, and adopt the modifications in the NOPR.</p>	
<p>U.S. Department of Defense and Federal Executive Agencies</p>	<p>Is concerned that utilities will be allowed to count non-utility owned RECs toward compliance under the NOPR modifications as DOD/FEA believes acknowledgement is equivalent to counting RECs towards compliance, possibly resulting in double counting. DOD/FEA therefore opposes the NOPR modifications.</p> <p>Staff's November 3<sup>rd</sup> wording changes may address concerns with the NOPR modifications but confirmation should be sought from the Center for Resource Solutions.</p>	<p>Staff believes that the NOPR modifications make it clear that acknowledgement of RECs is not for compliance purposes. RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.</p> <p>Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's November 3<sup>rd</sup> wording changes, would result in double counting. No change is needed in response to this comment.</p>
<p>Vote Solar</p>	<p>Vote Solar believes key provisions are vague. The proposed rules appear to provide that non-utility owned RECs will be acknowledged by the Commission for informational purposes. Vote</p>	<p>Staff believes the NOPR modifications are clear and that they provide protection for the owners of non-utility owned RECs. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>Solar proposes that the Commission be very clear as to whether the rules' language means that non-utility owned RECs can be used by the utility for REST compliance. If so, Vote Solar opposes that approach, because RECs have value and may not be conveyed for free to the utility. Vote Solar shares the Commission's intent to avoid double-counting, but the proposed language will compromise REC value because "acknowledging" non-utility owned RECs for REST compliance creates a double-counting scenario. When customer owned RECs are used to track REST compliance, the utility must pay the customer for the value of the REC. RECs cannot retain market value if they are claimed by a utility for RPS compliance. If the Commission adopts the proposed rule changes, customers owning RECs in Arizona will be unable to receive Green-e Energy and other certifications for their RECs.</p> <p>The clarifying modification proposed by Staff "...will be</p>	<p>Staff acknowledges this supportive comment. No change is needed in</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>acknowledged for reporting purposes, but will not be eligible for compliance with R14-2-1804 and-1805” clarifies the vague language in the proposed rule changes. If Staff’s proposed modifications in its comments are adopted, the value of RECs will not be devalued. Vote Solar’s concerns with the proposed changes are largely addressed by the Staff’s November 3 modifications, and we therefore support the proposed rule changes if Staff’s modifications are adopted.</p> <p>We recommend that the Commission begin using WREGIS (or other tracking system) to track REST compliance, to ensure that any RECs used for TT compliance is appropriately issued, tracked and retired.</p>	<p>response to this comment.</p> <p>This proposal is outside the scope of this proposed rulemaking. No change is needed in response to this comment.</p>
<p>Residential Utility Consumer Office (“RUCO”)</p>	<p>[initial comments filed on November 10, 2014]</p> <p>The Commission should consider alternative policies to resolve the REC issues.</p>	<p>The Commission has considered a wide variety of options in over two years of proceedings leading to the currently proposed NOPR modifications. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>There is no version of the renewable energy policy that stops the outflow of RECs to other states.</p> <p>We support Staff's clarification, as it will avoid debate each year on the meaning behind the term "acknowledge".</p> <p>The Rule revision, with Staff's clarification, appears to meet the end goal of Commissioner Brenda Burns to ensure that there will not be a claim on the RECs of solar adopters.</p> <p>[responsive comments filed on November 14, 2014]                      RUCO suggests adding the following language to the REST rules: "Affected utilities, upon approval by the Commission, may be authorized to use non-DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-DG RECs applied to the carve-out cannot exceed the number of RECs and/or kWhs produced by customers who have not exchanged their RECs to the utility in</p>	<p>This issue is outside the scope of rule changes contemplated in this proceeding but may be something the Commission could consider in the future. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff does not believe it is necessary to add the language proposed by RUCO to the REST rules. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>their respective service territory.” RUCO argues that this language will enable future policies that allow DG adopters a choice to keep their RECs or provide them to the utility, and, if the customer decides to keep their RECs, the utility will incur a small charge that will cover the cost of procuring inexpensive, unbundled RECs.</p>	
<p>Solar Energy Industries Association</p>	<p>[initial comments filed November 10, 2014]</p> <p>We support Staff’s November 3, 2014 recommendations as set forth in its comments. The Commission’s proposal with Staff’s recommended modifications is aligned with the Commission’s intent of tracking the DE market while protecting ratepayer interests in RECs.</p> <p>We agree with Staff that these clarifying modifications do not amount to a “substantial change.” Therefore, we recommend that the Commission adopt its proposal as modified by Staff.</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
Arizona Solar Deployment Alliance	[comment filed on November 14; ] ASDA supports the REST rule modifications proposed in this docket. ASDA's main interest is to maintain the DG carve out currently contained in the REST rules and appreciates the Commission's commitment to maintaining the carve out.	Staff acknowledges this supportive comment and agrees that the NOPR modifications and Staff's November 3 <sup>rd</sup> filing preserve the DG carve out. No change is needed in response to this comment.
Terry Finefrock	[comment filed on November 14; Mr. Finefrock also provided comment at the Tucson public comment session] Mr. Finefrock said it appears that the NOPR modifications may allow double-counting of RECs.	Staff believes that the NOPR modifications make it clear that RECs not owned by the utilities may not be used by the utilities to demonstrate compliance and thus no double counting would occur. No change is needed in response to this comment.
<b>TUCSON PUBLIC COMMENT SESSION</b>		
Robert Bulechek (an energy efficiency consultant and chair of the Tucson-Pima Metropolitan Energy Commission)	Mr. Bulechek fears the REST standard will be weakened if a utility can count RECs it doesn't own. RECs are a way to acknowledge that clean energy has health and climate effects.  If a utility uses RECs for compliance purposes, it should have to pay for them.	Staff does not believe the REST standard will be weakened by the NOPR modifications and the Staff November 3 <sup>rd</sup> filing. Staff notes that utilities will not be allowed to count RECs they do not own towards compliance. No change is needed in response to this comment.  Staff believes that there is nothing in the NOPR modifications or Staff's November 3 <sup>rd</sup> filing that would allow a utility to use RECs they don't own for compliance

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
<p>Ryan Anderson  (the planning, sustainability, and transportation policy advisor to City of Tucson Mayor Jonathan Rothschild).</p>	<p>Mr. Anderson read prepared written comments of Mayor Rothschild into the record. Mayor Rothschild urges Commission to preserve RECs' integrity; help to keep the solar market thriving; believes track and recording of DE, if used to satisfy utility REC requirements would erode REC market and compromise REST and pursue policies that don't result in double-counting or a regulatory taking.</p> <p>The Mayor opposed the initial draft of the revisions, but Mr. Anderson believes, based on the discussion at the Public Comment meeting, that Staff's November 3<sup>rd</sup> filing may satisfy the Mayor's concerns.</p>	<p>purposes.</p> <p>Staff believes that both the NOPR modifications and Staff's November 3<sup>rd</sup> wording changes achieve the goals discussed by Mayor Rothschild. No change is needed in response to this comment.</p> <p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p>
<p>Bruce Plenk</p>	<p>Mr. Plenk thinks Staff November 3<sup>rd</sup> comments regarding use of word "acknowledge" in proposed rules is an important clarification.</p> <p>Mr. Plenk believes it may be useful to seek comments from Center for Resource Solutions.</p>	<p>Staff acknowledges this supportive comment. No change is needed in response to this comment.</p> <p>Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	<p>Mr. Plenk believes the Commission should preserve the original intent of REST rules, and expand the solar market.</p>	<p>November 3rd wording changes, would result in double counting. No change is needed in response to this comment.</p> <p>Staff believes that the original intent of the REST rules is preserved by both the NOPR modifications and Staff's November 3<sup>rd</sup> wording changes. No change is needed in response to this comment.</p>
<p>Terry Finefrock</p>	<p>Mr. Finefrock would like to see CRS comment on the proposed revisions.</p> <p>Mr. Finefrock believes there may be contract law implications related to ownership of RECs resulting from the NOPR modifications and Staff's November 3<sup>rd</sup> wording changes.</p>	<p>Staff has been in communication with CRS and CRS indicated, in an e-mail Staff docketed on 11-13-14, that it does not believe the proposed changes, with Staff's November 3<sup>rd</sup> wording changes, would result in double counting. No change is needed in response to this comment.</p> <p>Staff does not believe there are any contract law implications resulting from the NOPR modifications or Staff's November 3<sup>rd</sup> wording changes. No change is needed in response to this comment.</p>
PHOENIX PUBLIC COMMENT SESSION		
<p>Arizona Solar Deployment Alliance</p>	<p>ASDA supports the REST rule modifications proposed in this docket. ASDA's main interest is to maintain the DG carve out currently contained in the REST rules and appreciates the Commission's commitment to maintaining</p>	<p>Staff acknowledges this supportive comment and agrees that the NOPR modifications and Staff's November 3<sup>rd</sup> filing preserve the DG carve out. No change is needed in response to this comment.</p>

INDIVIDUAL/COMPANY	COMMENT	ACC RESPONSE
	the carve out.	
APS	<p>In addition to reiterating its written comments, APS noted that CRS believes that Staff's modifications would not lead to double counting, but say in their email that they can't determine for sure until the final rule language is available, and, even then, future Commission action could make the RECs ineligible for Green-e energy.</p>	<p>See discussion of APS initial comments filed November 10, 2014 and APS responsive comments dated November 14, 2014. No change is needed in response to this comment.</p>
RUCO	<p>RUCO believes that its proposed additional language, submitted in its November 14 comments, will set up a "no regrets" policy mechanism that, in the future, will allow utilities to use non-DG RECs for REST compliance, and this language may help to comply with EPA rules in the future, if that proves necessary.</p>	<p>See discussion of RUCO initial comments filed November 10, 2014 and responsive comments filed on November 14, 2014. No change is needed in response to this comment.</p>

Arizona Corporation Commission  
Docket No. RE-00000C-14-0112  
Page 14

**DISCUSSION OF THE ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

In the September 19, 2014 Notice of Filing Proposed Rulemaking Documents with the Secretary of State, Staff provided its preliminary summary of the economic, small business, and consumer impact. Staff has reviewed the preliminary summary contained in the September 19, 2014 Notice and does not have any changes to it at this time.

Service List for: Arizona Corporation Commission  
Docket No. RE-00000C-14-0112

Garry D. Hays  
Law Offices of Garry D. Hays, PC  
1702 East Highland Avenue, Suite 204  
Phoenix, Arizona 85016  
Attorney for Arizona Solar Deployment  
Alliance

John Wallace  
GCSECA  
2210 South Priest Drive  
Tempe, Arizona 85282

Michael A. Curtis  
William P. Sullivan  
Curtis, Goodwin, Sullivan,  
Udall & Schwab, PLC  
501 East Thomas Road  
Phoenix, Arizona 85012  
Attorneys for Mohave Electric Cooperative,  
Inc. and Navopache Electric Cooperative,  
Inc.

Peggy Gillman  
Manager of Public Affairs and  
Energy Services  
Mohave Electric Cooperative, Inc.  
Post Office Box 1045  
Bullhead City, Arizona 86430

Tyler Carlson  
Chief Operating Officer  
Mohave Electric Cooperative, Incorporated  
Post Office Box 1045  
Bullhead City, Arizona 86430

Charles Moore  
Navopache Electric Cooperative, Inc.  
1878 West White Mountain Boulevard  
Lakeside, Arizona 85929

Court S. Rich  
Rose Law Group pc  
7144 East Stetson Drive  
Suite 300  
Scottsdale, Arizona 85251

C. Webb Crockett  
Fennemore Craig, PC  
2394 East Camelback Road  
Suite 600  
Phoenix, Arizona 85016-3429

Bradley Carroll  
88 East Broadway Boulevard, MS HQE910  
Post Office Box 711  
Tucson, Arizona 85702

Michael W. Patten  
Roshka DeWulf & Patten, PLC  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

Deborah R. Scott  
Thomas L. Loquvam  
Arizona Public Service Company  
400 North 5th Street, MS 8695  
Phoenix, Arizona 85004

Gregory L. Bernosky  
Arizona Public Service Company  
400 North 5th Street, MS 9708  
Phoenix, Arizona 85004

Anna Lands  
Cascabel Working Group  
6520 Casabel Road  
Benson, Arizona 85602

Lawrence V. Robertson, Jr.  
Post Office Box 1448  
Tubac, Arizona 85646

Edward Burgess  
Kris Mayes Law Firm  
1 East Camelback Road, Suite 550  
Phoenix, Arizona 85012

Ruel Rogers  
The Morenci Water & Electric Company  
Post Office Box 68  
Morenci, Arizona 85540

Creden Huber  
Sulphur Springs Valley Electric Cooperative  
350 North Haskell Avenue  
Willcox, Arizona 85643

Kirk Gray  
Graham County Electric Cooperative  
Post Office Drawer B  
Pima, Arizona 85543

Caroline Gardener  
Trico Electric Cooperative, Inc.  
Post Office Box 930  
Marana, Arizona 85653-0930

Roy Archer  
Ajo Improvement Company  
Post Office Drawer 9  
Ajo, Arizona 85321

Michael Pearce  
Duncan Valley Electric Cooperative  
Post Office Box 440  
Duncan, Arizona 85534

Annie Lappe  
Rick Gilliam  
The Vote Solar Initiative  
1120 Pearl Street, Suite 200  
Boulder, Colorado 80302

Timothy Hogan  
Arizona Center for Law in the Public Interest  
202 East McDowell Road, Suite 153  
Phoenix, Arizona 85004

Giancarlo Estrada  
Kamper, Estrada & Simmons  
3030 North 3rd Street, Suite 200  
Phoenix, Arizona 85012

David Berry  
Western Resource Advocates  
Post Office Box 1064  
Scottsdale, Arizona 85252-1064

Kevin Koch  
612 North Seventh Avenue  
Tucson, Arizona 85705

Daniel Pozefsky  
Residential Utility Consumer Office  
1110 West Washington, Suite 220  
Phoenix, Arizona 85007

Michael Neary  
Arizona Solar Energy Industries Association  
111 West Renee Drive  
Phoenix, Arizona 85027

Kyle J. Smith, General Attorney  
Office of the Judge Advocate General  
U.S. Army Legal Services  
9275 Gunston Road  
Fort Belvoir, Virginia 22060-5546

Karen S. White, Staff Attorney  
U.S. Air Force Utility Law Field Support  
Center  
AFLOA/JACL-ULFSC  
139 Barnes Drive  
Tyndall AFB, Florida 32403

Christopher Thomas  
Fred E. Breedlove III  
Squire Sanders (US) LLP  
1 East Washington, 27th Floor  
Phoenix, Arizona 85004

Scott S. Wakefield  
Ridenour, Hienton & Lewis PLLC  
201 North Central Avenue, Suite 3300  
Phoenix, Arizona 85004-1052

Rick Umoff  
Solar Energy Industries Association  
505 9th Street NW, Suite 800  
Washington, DC 20004

Robin Quarrier  
Jennifer Martin  
Center for Resource Solutions  
1012 Torrey Avenue  
San Francisco, California 94129

Ken Baker  
Wal-Mart Stores, Inc.  
2011 S.E. 10th Street  
Bentonville, Arkansas 72716-0550

Kerry Hattevik  
Director of West Regulatory and Market  
Affairs  
NextEra Energy Resources, LLC  
829 Arlington Boulevard  
El Cerrito, California 94530

Douglas V. Fant  
Law Offices of Douglas V. Fant  
3655 West Anthem Way  
Suite A-109, PMB 411  
Anthem, Arizona 85086

Kevin C. Higgins, Principal  
Energy Strategies, LLC  
215 South State Street  
Suite 200  
Salt Lake City, Utah 84111

Maja Wessels  
First Solar  
350 West Washington Street  
Tempe, Arizona 85281

Joe King  
Arizona Electric Power Cooperative  
Post Office Box 670  
Benson, Arizona 85602

Christopher Martinez  
900 North Gold Avenue  
Post Office Box 631  
Deming, New Mexico 88031-0631

LaDel Laub  
Dixie Escalante Rural Electric Association  
71 East Highway 56  
Beryl, Utah 84714

Carl Albrecht  
Garkane Energy Cooperative  
Post Office Box 465  
Loa, Utah 84747

Greg Bass  
Noble Americas Energy Solutions  
401 West A Street, Suite 500  
San Diego, California 92101-3017

Laura Palm Belmar  
Morgan Stine  
Green Earth Energy & Environmental, Inc.  
2370 West SR 89A  
Suite 11 PMB 430  
Sedona, Arizona 86336

Josh Lieberman  
Renewable Energy Markets Association  
1211 Connecticut Avenue NW, Suite 600  
Washington, DC 20036-2701

Coash & Coash  
1802 N. 7<sup>th</sup> St.  
Phoenix, Arizona 85006

**EXHIBIT E****Summary of the Comments Made on the Rulemaking and the Agency Response to Them  
Prepared Pursuant to A.R.S. § 41-1001(16)(d)(iii)**

Summaries of the written and oral comments received by the Commission after publication of the Notice of Proposed Rulemaking ("NPRM") are included in the following table, along with the Commission response to each. Many commenters addressed both the language in the NPRM and the language changes suggested by the Commission's Utilities Division ("Staff") in its filing made on November 3, 2014 ("11/3 Comments").

<b>Written Comments</b>	
<b>Member of the Public &amp; Comment</b>	<b>Agency Response</b>
<b>Vote Solar</b>	
Solar customers should retain ownership of the RECs associated with their clean energy generation or receive appropriate compensation for those RECs if they are conveyed to utilities to be used for REST compliance.	The Commission agrees. The existing REST rules are consistent with this concept. To ensure that the REST rules clearly remain consistent with this concept, the Commission is adopting the 11/3 Comments' suggested revisions to § 1805 and § 1812, which clarify that neither the kWhs associated with non-utility owned RECs nor the non-utility owned RECs are to be used for compliance.
The NPRM rule language was vague. Specifically, § 1812(C) from the NPRM was unclear concerning whether utilities were going to be permitted to use non-utility-owned RECs for REST compliance, something that should not be allowed because RECs have value and may not be conveyed to a utility for free. The modifications proposed by Staff in the 11/3 Comments address this concern. Vote Solar supports the Commission's adoption of the modified § 1812(C) language from the 11/3 Comments.	The Commission agrees that the suggested revisions in the 11/3 Comments improve clarity. The Commission is revising § 1805 and § 1812, consistent with the suggested revisions in the 11/3 Comments.
The value of RECs would be compromised by the NPRM rule language because the act of "acknowledging" non-utility-owned RECs for REST compliance purposes would constitute double counting, would make the RECs ineligible for Green-e Energy and other certifications, and would eliminate the value of the RECs on the voluntary market. This devaluation of RECs could easily be construed as a regulatory taking. The clarifying modifications proposed by Staff in the 11/3 Comments resolve this concern by protecting REC values.	The Commission agrees that the suggested revisions in the 11/3 Comments improve clarity about the consequences of acknowledging RECs, which the Commission did not intend to result in double counting. The Commission is revising § 1805 and § 1812, consistent with the suggested revisions in the 11/3 Comments.
Only Arizona and Hawaii do not verify RPS compliance through a REC tracking system. The Commission should begin using WREGIS or another tracking system to track REST compliance, because this would help ensure that any RECs used	The Commission appreciates the suggestion and will consider whether this would be a cost-effective and beneficial change in its administration of the REST

<p>for compliance are appropriately issued, tracked, and retired. This would increase transparency and accountability by allowing the Commission to verify compliance reports.</p>	<p>rules. For now, however, it goes beyond the scope of this rulemaking. No changes to the rules are needed as a result of this comment.</p>
<p>Vote Solar supports the proposed rule changes if the modifications of the 11/3 Comments are adopted.</p>	<p>The Commission is adopting the modifications of the 11/3 Comments and appreciates the supportive comment.</p>
<p><b>U.S. Department of Defense &amp; Federal Executive Agencies (“DOD/FEA”)</b></p>	
<p>DOD/FEA is involved with multiple renewable energy projects in Arizona, including a project involving the Army and TEP at Fort Huachuca, a project involving the Air Force and a third-party developer at Davis-Monthan Air Base, and extensive solar PV projects built by the Department of Veterans Affairs (VA). DOD/FEA needs to retain its RECs for purposes of complying with federal renewable energy requirements—the National Defense Authorization Act (2007) (“NDAA”), the Energy Policy Act of 2005 (“EPACT”), and Executive Order 13423 (“EO”). EPACT and EO both use RECs to measure compliance. Army Policy requires retention of RECs for any Army-owned renewable energy generation facility. The Department of Energy’s 2008 Renewable Energy Requirement Guidance for EPACT and EO (“DOE Guidance”) prohibits double counting of RECs and defines double counting to include instances when renewable energy counted toward EPACT or EO compliance is also used to meet a Renewable Portfolio Standard (“RPS”) or other regulatory requirement. The DOE Guidance provides that RECs sold or relinquished to meet State RPS goals or corporate renewable energy goals and not replaced with other RECs do not contribute to the goals established by EPACT and EO.</p> <p>The rules proposed in the NPRM would effectively destroy REC integrity in Arizona and render the RECs associated with the energy produced at facilities like the VA’s worthless for use toward federal compliance requirements. If the Commission counts renewable energy generated by a customer toward compliance with the REST, but does not claim or retire the associated REC, it is the same as claiming the REC, and would make a customer’s attempt to use or sell the REC double counting. The Commission’s acknowledgment of energy, presumably toward REST requirements, would also have the effect of retiring the RECs associated with the energy. DOD/FEA opposes the rules as proposed in the NPRM because as long as the rule change seeks to count a customer’s renewable energy toward the REST requirements without an agreement and compensation to the customer, it will result in double counting and deprive the customer of its investment and</p>	<p>The Commission appreciates DOD/FEA’s explanation for its specific concerns related to the issue of REC integrity. The Commission agrees that REC integrity is crucial and that double counting must be avoided. To ensure that its position is clear, the Commission is adopting the 11/3 Comments’ suggested revisions to § 1805 and § 1812, which clarify that neither the kWhs associated with non-utility owned RECs nor the non-utility owned RECs are to be used for compliance.</p>

<p>property without just compensation. It should be possible for the Commission to work with organizations like the Center for Resource Solutions (“CRS”) to craft a rule that would not destroy REC integrity and deprive Arizona utility customers of their renewable energy investments. Any change in REC policy that results in double counting could severely inhibit the growth of renewable generation in Arizona and may result in abandonment of future DOD/FEA projects planned for Arizona.</p>	
<p>The changes in the 11/3 Comments may be sufficient to address the problems with the NPRM proposed rules by upholding REC integrity and protecting the rights of customers like the VA, but the Commission should seek the opinion of CRS to be reasonably certain that any proposed REST rule change will maintain REC integrity in Arizona.</p>	<p>The Commission is adopting the modifications of the 11/3 Comments to ensure that REC integrity is upheld and double counting avoided. CRS’s response to suggested changes in the 11/3 Comments indicates that those modifications, if implemented as written, will alleviate CRS’s concerns related to REC integrity and double counting.</p>
<p><b>Residential Utility Consumer Office (“RUCO”)</b></p>	
<p>The Commission should consider alternative policies that would not require a rule change, would maintain REC integrity, would protect ratepayers from future environmental regulatory risk, and would keep RECs in Arizona. As more time passes, more RECs from third-party leased systems flow to out-of-state solar companies.</p> <p>The following language should be added to the REST rules to enable future policies facilitating REC transfers by allowing DG adopters the choice of (1) providing their RECs to the utility or (2) keeping their RECs and paying a small charge designed to cover the cost of procuring inexpensive unbundled RECs:</p> <p style="padding-left: 40px;">Affected utilities, upon approval of the Commission, may be authorized to use non-DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-DG RECs applied to the carve-out cannot exceed the number of RECs and/or kWhs produced by customers who have not exchanged their RECs to the utility in their respective service territory.</p> <p>The Commission should also consider the additional policy suggestions made by RUCO in its April 21, 2014, filing.</p>	<p>The Commission understands that RUCO is concerned about adoption of the pending EPA Rule 111(d) and how that would impact Arizona. The Commission appreciates RUCO’s suggestions in this regard and will consider whether responsive changes in policy, or in the REST rules themselves, would be cost-effective, beneficial, and in the public interest once the specifics of the final EPA Rule 111(d) are known. Until then, the Commission believes that it is premature to make additional changes either in rule or through policy. No changes to the rules are needed as a result of this comment.</p>
<p>RUCO appreciates Commissioner Brenda Burns’s care to ensure that there will not be a claim on the RECs of solar adopters.</p>	<p>The Commission appreciates the supportive comment. No changes to the rules are needed as a result of this comment.</p>

<p>The clarifications in the 11/3 Comments will avoid an annual debate on the meaning of "acknowledge," and RUCO supports them. With the clarifications in the 11/3 Comments, the rule revisions appear to meet the end goal set forth by Commissioner Brenda Burns.</p>	<p>The Commission is adopting the modifications of the 11/3 Comments and appreciates the supportive comment.</p>
<p><b>Tucson Electric Power Company &amp; UNS Electric, Inc. ("TEP/UNSE")</b></p>	
<p>TEP/UNSE reviewed the REST rule revisions as proposed in the NPRM and the additional modifications included in the 11/3 Comments and have no further comments on the proposed rule revisions.</p>	<p>The Commission appreciates TEP/UNSE's informing the Commission that it would not object to adoption of the rule revisions as proposed in the NPRM or as further modified through the 11/3 Comments.</p>
<p><b>Solar Energy Industries Association ("SEIA")</b></p>	
<p>SEIA supports the modifications set forth in the 11/3 Comments. The rule revisions proposed in the NPRM, with the further modifications of the 11/3 Comments, align with the Commission's intent to track the distributed energy market while protecting ratepayer interests in RECs. The modifications in the 11/3 Comments do not amount to a "substantial change." The Commission should adopt the proposed rule revisions, with the modifications included in the 11/3 Comments.</p>	<p>The Commission is adopting the modifications of the 11/3 Comments and appreciates the supportive comment.</p>
<p><b>Arizona Public Service Company ("APS")</b></p>	
<p>Initial Comments:          APS supports the revisions to the REST rules published in the NPRM and urges the Commission to adopt them without delay because they provide an effective solution to the issue of how to demonstrate compliance with the REST rules DE requirements when DE RECs are no longer purchased with direct cash incentives. The NPRM rule revisions would require a utility to track, record, and annually report all renewable kWhs generated in its service territory, distinguishing between kWhs for which the utility owns the RECs and kWhs for which the utility does not own the RECs. The Commission would acknowledge the non-utility owned kWhs of renewable energy generated. The Commission would not count RECs or measure the amount of renewable energy in determining compliance with the REST rules, but would instead consider all available information, which presumably could include the pace of renewable installations, the number of customers with renewable facilities, the amount of renewable capacity, and other relevant facts. APS supports the NPRM rule revisions because they provide a reasonable post-incentive path to compliance, preserve the REST 15 percent requirement and the 30 percent DE carve-out, and resolve the perceived double-counting issue without imposing additional costs on customers. APS had not yet</p>	<p>The Commission appreciates APS's comments. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission believed that the rule language included in the NPRM had been crafted clearly enough to accomplish those goals. However, because a number of commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in the NPRM, concerns that would be alleviated by the revisions to § 1805 and § 1812 included in the 11/3 Comments, the Commission is adopting those clarifying language changes. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for informational</p>

completed its analysis of the 11/3 Comments.

Responsive comments:

APS believed the purpose of the NPRM was to establish a means for the Commission to determine compliance with the REST rules in a manner that did not require utilities to acquire and then retire DE RECs. APS supports the modifications to the REST rules included in the NPRM, as a reasonable framework to consider utility compliance when direct cash incentives, and the RECs associated with those incentives, are no longer available. APS does not understand how it would establish compliance under the rules with the modifications from the 11/3 Comments. The 11/3 Comments have "stripped away alternative means for utilities to demonstrate compliance by eliminating the nexus between compliance with the REST Rules and the Commission's consideration of all available information. . . . By removing the nexus to compliance[, the modifications in the 11/3 Comments] effectively eliminate the ability for measures such as market installations and historical and projected production and capacity levels to be considered by the Commission for compliance purposes." The 11/3 Comments result in the Commission's being able to determine compliance only by determining whether the utility owns sufficient RECs to meet the REST's annual quantitative requirements. This would result either in utilities being forced to purchase RECs from third parties, which would directly and negatively impact customers because they will pay for purchasing RECs as a cost of service, or utilities requesting waivers, which "challenges the very purpose of the REST rules." The Commission should reject the revisions included in the 11/3 Comments and adopt the REST rule modifications as published in the NPRM so as to provide utilities certainty and avoid increased costs to customers.

purposes only. Additionally, the NPRM did not alter § 1804(A) or § 1805(A), each of which specifically requires affected utilities to satisfy annual requirements by obtaining RECs. APS did not explain how it would comply with § 1805 by providing additional information if it had insufficient utility-owned RECs. If APS believed that the act of acknowledging RECs would directly impact compliance, or that the new reporting was to be used for compliance purposes, such a belief would underscore the need for the Commission to clarify its intent further by incorporating the modifications from the 11/3 Comments into the rules. Clarifying the intent in the rule language is important because neither the Preambles to the NPRM and the Final Rulemaking nor the Commission's Decision are incorporated into the Administrative Code.

The clarifying language is necessary to avoid litigation concerning whether a "regulatory taking" results from the Commission acknowledging non-utility owned RECs. The financial risks of litigation, and any negative consequences from a decision adverse to the Commission, would fall upon the State of Arizona and Arizona's taxpayers, not any utility's owners/shareholders. The Commission is confident that the REST rules, as modified through this rulemaking, will allow the Commission sufficient flexibility to administer the rules in a manner consistent with the interests of all affected utilities and with the public interest. As APS and Staff acknowledged during the oral proceeding for this matter, the Commission has not historically issued decisions specifically finding that affected utilities have or have not complied with the annual REST standards. Rather, since the initial adoption of the REST rules, the Commission has taken a forward-looking

	<p>approach by focusing on the quality and cost-effectiveness of affected utilities' REST Implementation Plans. This rulemaking does not change the Commission's focus.</p> <p>No changes to the rules are needed as a result of this comment.</p>
<p>Any attempt to address EPA Rule 111(d) in this rulemaking would be premature, as the final Rule 111(d) has not yet been established and may be substantially different than the rule as proposed.</p>	<p>The Commission agrees that until the specifics of the final EPA Rule 111(d) are known, it would be premature to attempt to respond to it either in policy or in rule.</p> <p>No changes to the rules are needed as a result of this comment.</p>
<p><b>The Alliance for Solar Choice ("TASC")</b></p>	
<p>TASC supports the comments filed in this matter by SEIA. The reasons for TASC's support are contained in documents filed by various parties in the Track &amp; Record Docket, and TASC incorporates by reference the arguments and testimony filed in the Track &amp; Record Docket, including but not limited to several documents attached to its filing, including the Surrebuttal Testimony of David Berry; the Opening Brief of Western Resource Advocates ("WRA") and Vote Solar; an EPA letter to Chairman Stump docketed on July 24, 2013; the Reply Brief of WRA and Vote Solar; SEIA's response to the post-hearing briefs of Staff, APS, and TEP/UNSE; and the DOD/FEA brief. The attachments also included CRS's comments docketed in this matter on April 21, 2014.</p>	<p>The Commission appreciates TASC's support for SEIA's comments, which support the proposed rules as modified by the 11/3 Comments. No changes to the rules are needed as a result of this comment.</p>
<p><b>Arizona Solar Deployment Alliance ("ASDA")</b></p>	
<p>ASDA supports the proposed modifications to the REST rules. ASDA's main interest has been to maintain the DG carve-out. ASDA appreciates the Commission's commitment to maintaining the DG carve-out.</p>	<p>The Commission appreciates the supportive comment. No changes to the rules are needed as a result of this comment.</p>
<p><b>Terry Finefrock</b></p>	
<p>Mr. Finefrock provided a copy of an article by CRS, which he had referenced during the oral proceeding on November 12, 2014. Mr. Finefrock stated that in the NPRM the Commission was proposing the same type of action that has resulted in a lawsuit in Vermont. Mr. Finefrock asserted that it makes no sense to risk litigation and liability for damages when RECs can be purchased for less than a penny per kWh. Mr. Finefrock included the text of the CRS article, found at <a href="http://www.green-e.org/news/CRS_NewsFallWinter2014.html">http://www.green-e.org/news/CRS_NewsFallWinter2014.html</a>.</p> <p>Summary of the CRS article: A petition filed in September 2014 asked the Federal Trade Commission ("FTC") to investigate whether Green Mountain Power ("GMP"), Vermont's largest utility, is violating § 5(a) of</p>	<p>The Commission appreciates these comments. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission believed that the language included in the NPRM had been crafted clearly enough to accomplish those goals. However, because commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in the NPRM, the Commission is adopting the clarifying language changes to § 1805</p>

<p>the FTC Act, using marketing contrary to the FTC’s Guides for the Use of Environmental Marketing Claims (“Green Guides”), and engaging in deceptive trade practices because GMP is applying renewable energy generated in Vermont toward Vermont renewable energy targets, selling the environmental attributes to organizations outside Vermont, and telling Vermont customers that they are using renewable energy. Vermont’s Sustainably Priced Energy Enterprise Development (SPEED) feed-in tariff program is clearly double counting because although SPEED is presented as a voluntary target, the target becomes mandatory if not met, which results in the state counting energy used in-state toward its renewable energy goals and utilities telling ratepayers they are getting renewable energy, although the RECs are stripped off and sold elsewhere. Green-e does not certify RECs that have been used to meet a state’s delivery-based renewable energy goals, and RECs are not eligible for use in a Green-e Energy certified sale if a state mandate allows RECs to be sold from generation while still counting the null electricity toward the RPS. Green-e disallows use of Vermont RECs where the associated electricity is being used toward the SPEED program. Connecticut has banned the use of Vermont’s double-counted RECs toward its RPS, and NextEra Energy has announced that it will no longer trade Vermont RECs.</p>	<p>and § 1812 included in the 11/3 Comments. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for informational purposes only. The Commission also believes that these changes will ensure that REC integrity is maintained and double counting avoided.</p>
<p><b>Hieu Tran &amp; Carolyn Allen</b></p>	
<p>Hieu Tran and Carolyn Allen each filed comments urging the Commission not to subsidize the solar industry, opining that solar is not affordable and does not result in the savings promised for homeowners, and opining that homeowners rather than solar companies should benefit from any tax subsidies that may be available. Neither specifically addressed the proposed rules.</p>	<p>The Commission appreciates the commenters taking the time to write the Commission to express their opinions concerning the solar industry and its interactions with the government. No changes to the rules are needed as a result of these comments.</p>
<p style="text-align: center;"><b>Oral Comments—Tucson, 11/12/14</b></p>	
<p style="text-align: center;"><b>Public Comment</b></p>	<p style="text-align: center;"><b>Agency Response</b></p>
<p><b>Robert Bulechek</b></p>	
<p>The REST standard is far too weak at 5 percent in 2015, and it will be diluted further if utilities are permitted to count RECs that they do not own. It is important to protect the integrity of the REST standard, which should be greatly increased. Although RECs have a reputation problem because they are “easily gamed” due to their not being directly measurable by a meter, RECs are an appropriate way for utilities to indicate compliance with RE standards because they offer a straightforward accounting of nonpolluting energy created and represent the value of nonpolluting energy for health and climate effects. A Harvard study recently found the externality</p>	<p>The Commission appreciates these comments. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission believed that the language included in the NPRM had been crafted clearly enough to accomplish those goals. However, because commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in</p>

cost of coal-based pollution from a coal generating plant to be 18 cents per kWh. Allowing utilities to use non-utility-owned RECs for regulatory purposes would further the REC reputation problem and hinder the use of RECs to represent the value of the production of clean energy. Additionally, allowing utilities to count non-owned RECs for regulatory purposes would constitute a taking of their value without compensation. The Commission should protect the integrity of RECs owned by homeowners who made the investment. If a utility wants to use RECs for compliance, the utility should purchase them on the market. Not only utilities are required to own RECs in order to obtain their benefits; U.S. Green Building Council and its LEED program also require REC ownership in order to obtain points toward building accreditation. If the REST rules were to require reporting, with a distinction between what a utility owns and what it does not own in terms of RECs, the question would be whether the utility is receiving value from that reporting—if it is, that would sully the reputation of the REC and create a fundamental market problem with the value of the intangible asset.

the NPRM, the Commission is adopting the clarifying language changes to § 1805 and § 1812 included in the 11/3 Comments. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for informational purposes only. The Commission also believes that these changes will ensure that REC integrity is maintained and double counting avoided. The Commission does not believe that it is necessary or appropriate to increase the REST standards at this time, particularly now that renewable energy installations appear to be increasing without direct monetary incentives.

**Tucson Mayor Jonathan Rothschild, through Policy Advisor Ryan Anderson**

Mayor Rothschild's top priority is jobs and economic development for the Tucson region. The solar industry falls within two categories of the "Five Ts of Tucson"—technology and trade. Arizona has abundant sunshine, and there is a worldwide interest in cheap, clean, renewable energy. Mayor Rothschild wants Tucson and Arizona to continue to attract and grow the solar industry. The Commission should act in a manner that maintains the integrity of the REST and gives certainty to the state's burgeoning market for trade in renewable energy, as any regulatory confusion created would harm the market that is thriving under the current REST rules and thereby benefiting the economy and energy security. While RECs are an accounting mechanism that provide a clear, efficient way for utilities to meet their REST requirements, changes to the Commission's rules to allow utilities to track and record DG throughout their service areas and use the DG to satisfy the REST requirements—allowing a REC to be claimed by more than one entity—would compromise the integrity and usability of RECs, erode the existing REC market, and compromise the REST. This would also expose the Commission to regulatory takings litigation because "property rights now inherent in the commodity known as a REC would lose value." The Track and Record policy would double count RECs by allowing multiple parties to make at least indirect claims on a single REC. The Commission should exercise

The Commission appreciates these comments and agrees that both jobs and economic development are priorities for all of Arizona. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission believed that the language included in the NPRM had been crafted clearly enough to accomplish those goals. However, because commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in the NPRM, the Commission is adopting the clarifying language changes to § 1805 and § 1812 included in the 11/3 Comments. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for informational purposes only. The Commission also believes that these

caution while considering these changes and should work with all relevant stakeholders to ensure that the value of Arizona RECs is not diminished and the existing REC market is not substantially weakened or destroyed. The Commission is charged with looking out for ratepayers' interests, and a functioning REC market meets those interests by creating an efficient means for utilities to achieve regulatory compliance. The Commission should pursue a policy that will not destroy the value of RECs or the market for trade in renewable energy, one that will help Arizona and southern Arizona realize the growth opportunities of solar energy and the solar industry. While the Mayor opposed the rule language as published in the NPRM, he had not yet reviewed the suggested revisions included in the 11/3 Comments. The modifications in the 11/3 Comments appeared to have addressed many of the Mayor's concerns, according to Mr. Anderson, who found the discussion at the oral proceeding illuminating and understood that utilities would not be able to claim RECs that they did not purchase.

changes will ensure that REC integrity is maintained and double counting avoided.

**Bruce Plenk**

Mr. Plenk expressed appreciation for the Commission's holding an oral proceeding in Tucson and believes that more hearings should be held in Tucson, as it is difficult to participate in Phoenix proceedings telephonically from Tucson.

The Commission appreciates the supportive comment and has been looking into the use of technology that would allow greater and easier participation in Phoenix proceedings from the Commission's Tucson office.

The original REST rules were intended to help expand solar in Arizona by having utilities pay for the right to count solar, and the question now is how to continue to expand the solar market and solar industry consistent with that goal, without getting bogged down in litigation or causing a turnback in the market. The key is to craft a rule that encourages the expansion of solar without interfering with the ability to buy and sell RECs in the marketplace. There were 30,000 MW of REC sales on the private market in Arizona in the past year, and it's important to preserve and expand that. The rules as proposed in the NPRM could create a double counting problem. Anything that puts a cloud or shadow over the marketability of RECs would be a disservice to the solar industry and to Arizona. Because RECs are out in the world, part of the marketplace, part of the solar industry, and part of Commission and regulatory life, the Commission cannot insulate its handling of Arizona RECs from the scrutiny of the rest of the world so that the larger marketplace beyond Arizona is not affected by that handling. While the Commission can do whatever it wants to do with RECs within its own purview, it cannot control the effect that has outside of its purview because others do not have to accept

The Commission appreciates these comments. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission believed that the language included in the NPRM had been crafted clearly enough to accomplish those goals. However, because commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in the NPRM, the Commission is adopting the clarifying language changes to § 1805 and § 1812 included in the 11/3 Comments. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for

<p>the Commission's label for what it has done—<i>i.e.</i>, just because the Commission says that the sky is green and yellow rather than blue, that doesn't make the sky green or yellow for other people. The Commission's actions have wide impacts beyond the Commission, and it would be short-sighted, bad policy, and counterproductive to expansion of the solar industry if the Commission chooses not to recognize that impact. Ignoring that impact will just result in another hearing down the road, with people saying that the solar industry is in the toilet because of the decision in this matter and asking a different Commission to undo it. It would be unfair for utilities to be able to take a "backdoor approach" allowing them to count RECs without paying for the RECs. It is also important to recognize that the DOD/FEA and other public entities may become the largest potential sellers of RECs, and as taxpayers benefit from the work of these public entities, it is important not to give away these entities' RECs, leaving them unable to comply with their own legal requirements.</p>	<p>informational purposes only. The Commission also believes that these changes will ensure that REC integrity is maintained and double counting avoided.</p>
<p>The 11/3 Comments are important, and the language clarifications included therein would be useful if adopted, particularly regarding the meaning of "acknowledge." The suggested changes in the 11/3 Comments go a long way to eliminating the double counting problem. But the Commission should try to obtain CRS's position on the 11/3 Comments, as CRS had raised concerns about double counting and the market impacts to Arizona RECs. It is important for the Commission to take into account the views of CRS and others involved in the REC market to determine if the problem would be eliminated by Staff's suggested changes.</p>	<p>The Commission is adopting the modifications of the 11/3 Comments to ensure that REC integrity is upheld and double counting avoided. CRS's response to suggested changes in the 11/3 Comments indicates that those modifications, if implemented as written, will alleviate CRS's concerns related to REC integrity and double counting.</p>
<p>It is questionable, from a rulemaking procedural/legal perspective, what the impact should be from Staff's filing the 11/3 Comments with language clarifications after the proposed rulemaking was published.</p>	<p>The Commission disagrees with this assessment. The Commission finds the changes suggested by Staff to be consistent with the language in the NPRM Preamble and to be clarifications rather than substantial changes. Clarifying changes of this type could have been introduced initially by Staff in its summary of comments with Staff responses or could have been introduced initially by the Hearing Division in a Recommended Opinion and Order. Staff's proposing these modifications in a filing docketed more than a week prior to the oral proceedings in this matter provided interested persons notice and</p>

allowed interested persons an opportunity to be heard regarding these suggested modifications. This process exceeded the requirements of the Administrative Procedure Act. The Commission is confident that Staff's sharing these comments when and in the manner that it did enhanced due process rather than infringing upon it. No changes to the rules are needed as a result of this comment.

**Terry Finefrock**

Mr. Finefrock provided comment in his personal capacity as a TEP ratepayer, but indicated that he has participated in a DOD DLA auction, solicitation, and procurement for RECs and has become quite familiar with RECs in his employment with Pima County in the area of contracts and procurements. RECs are owned in the public sector by entities such as the County, the City, and the VA, and "are certainly property." REC purchase agreements, contracts executed by APS and required by APS and TEP; establish that RECs have value and that they are the property of the generator. CRS's position from testimony in the Track & Record Docket was that one can use renewable energy to satisfy kWh requirements or the RECs, but not both at the same time. There is a case in Vermont regarding a utility doing something very similar to what is being proposed by the Commission here, and the utility is going to be noncompliant. The Commission needs to avoid going down that same path. The Commission is charged with optimizing benefits to ratepayers. Because the value of RECs is established by the market, and by the buyer, if the Commission's actions damage or taint the seller's property, that will reduce or eliminate the value of that property, causing damage. Then litigation would likely follow, with its associated costs, and that would ultimately be charged to the ratepayer. The REST has created a lot of work and value for Arizona and its communities, and the Commission must look at the risk and potential costs in proceeding with the REST rule changes as opposed to just having the utilities purchase RECs as they have always done. RECs could be purchased through public auctions, and TEP and APS could easily solicit offers to purchase RECs. The latest DOD DLA auction resulted in a price of less than one cent per REC. The value of solar is 18 cents, Minnesota's value of solar tariff said that the value is 14.5 cents, and current rates in TEP are about 12 cents. If the value of that solar energy is harvested, it would generate a 2.5 cent premium on top of

The Commission appreciates these comments. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission recognizes that RECs have value and that arguments have been made that the proposed rules in the NPRM would have detrimentally impacted that value, and could constitute a taking without just compensation. The Commission believed that the language included in the NPRM had been crafted clearly enough to accomplish its goals. However, because commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in the NPRM, the Commission is adopting the clarifying language changes to § 1805 and § 1812 included in the 11/3 Comments. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for informational purposes only. Additionally, the NPRM did not propose changes to § 1804(A) or § 1805(A), both of which require affected utilities to satisfy the REST standards by obtaining RECs. The rules will ensure that REC integrity is maintained and double

<p>current average rates, and all costs to purchase could be recovered. The Commission would be tainting the title to RECs, and there will be a lot of risk and a lot of potential costs to the ratepayers, without a lot of incremental benefits, if the Commission goes forward with the rulemaking. Staff said that acknowledgment is not compliance; but Mr. Finefrock thought that the primary objective of this rulemaking was to help the utilities comply with the DG requirement. If acknowledgment is not compliance, it is not clear how this rulemaking action would satisfy the primary objective or why it is being done. It is "word playing" to say that acknowledgment does not go to compliance, and it creates a slippery slope. However, if CRS determines that the Commission's rule revisions would not result in double counting, he would be much more comfortable with the rulemaking and would probably be okay with it. Without that reassurance, however, he suggests that the utilities continue buying RECs through contracts and through an auction process.</p>	<p>counting avoided while allowing the Commission sufficient flexibility to administer the rules in a manner consistent with the interests of all affected utilities and with the public interest. In addition, CRS's response to the suggested changes in the 11/3 Comments indicates that those modifications, if implemented as written, will alleviate CRS's concerns related to REC integrity and double counting.</p>
<b>Oral Comments—Phoenix, 11/14/14</b>	
<b>Public Comment</b>	<b>Agency Response</b>
<b>ASDA</b>	
<p>ASDA appreciates Commissioner Brenda Burns's stating in her original letter that she wanted to keep the DG carve-out in the REST rules and the Commission's maintaining that as one of the goals of this rulemaking. ASDA does not have a problem with the wording of the proposed rules.</p>	<p>The Commission appreciates the supportive comments. No changes to the rules are needed as a result of this comment.</p>
<b>APS</b>	
<p>The Commission should adopt the rules as proposed in the NPRM and reject the 11/3 Comments. The changes in the 11/3 Comments muddy the water. The fact that the 11/3 Comments raised concerns for APS indicates that the language could be interpreted in different ways in the future, regardless of what is now intended. The revisions proposed in the NPRM are the clearest way to go forward and would provide a "reasonable post-incentive path to compliance" without additional, unnecessary costs to customers and without changing the REST standard and the DG carve out. APS acknowledges that RECs "have value in other forums." The rules as proposed in the NPRM would have the Commission acknowledge the non-utility owned kWhs of renewable energy generated in a utility's service territory, without counting the RECs or measuring the amount of renewable energy in determining compliance. The rules proposed in the NPRM would give the Commission "flexibility, in determining compliance under the rules, to consider any number of factors."</p> <p>The revisions suggested in the 11/3 Comments make it difficult</p>	<p>The Commission appreciates APS's comments. From the beginning of this process, the Commission has emphasized that REC integrity is crucial and that double counting must be avoided. The Commission believed that the language included in the NPRM had been crafted clearly enough to accomplish those goals. However, because other commenters expressed grave concerns about what they perceived as vagueness in the rules as proposed in the NPRM, grave concerns that would be alleviated by the suggested revisions to § 1805 and § 1812 included in the 11/3 Comments, the Commission is adopting those clarifying language changes. The Commission believes that this clarifying language is consistent with the NPRM, as the Preamble to the NPRM</p>

to determine how a utility is to establish compliance under the REST rules, as a result of which this rulemaking would not resolve the fundamental question that was raised over two years ago. The 11/3 Comments “have stripped away alternative means for . . . demonstrating compliance by eliminating the nexus between compliance and the Commissioners’ consideration of all available information.” The 11/3 Comments would not allow the Commission to consider, for compliance purposes, things like market installations, historical and projected production, and capacity levels. The 11/3 Comments would only allow the Commission to determine compliance based on whether the utility has sufficient utility-owned RECs to meet the quantitative requirements of the rules. This could result in utilities’ being forced to purchase RECs from third parties, which would have a direct and negative impact on customers, as customers would pay for the RECs as a cost of service. To protect customers from incurring additional costs in this manner each year going forward, utilities might have to apply to the Commission annually for a waiver of the REST rules, which is the outcome this rulemaking was intended to avoid. APS was “somewhat alarmed” that the 11/3 Comments were changing the intent of the rule, but understands that is not what Staff meant to do. Under either the NPRM language or the modified 11/3 Comments language, APS would report the same information in the same way—the renewable energy kWhs for which the RECs are not owned by the utility. APS did not believe that the rule language proposed in the NPRM would allow APS to count non-utility owned RECs toward compliance. Although the Commission, to date, has not issued decisions saying that APS is either in or out of compliance, another Commission might find it important to do that.

specifically stated that the non-utility owned RECs would be acknowledged for informational purposes and that the new reporting was to be for informational purposes only. Additionally, the NPRM did not change § 1804(A) or § 1805(A), both of which require affected utilities to satisfy the REST by obtaining RECs. If APS believed that the act of acknowledgment would directly impact compliance, or that the reporting was to be used for compliance purposes, such a belief would underscore the need for the Commission to clarify its intent by incorporating the modifications from the 11/3 Comments into the rules themselves. The Commission is confident that the REST rules, as modified through this rulemaking, will allow the Commission sufficient flexibility to administer the rules in a manner consistent with the interests of all affected utilities and with the public interest. As APS acknowledged during the oral proceeding for this matter, the Commission has not historically issued decisions specifically finding that affected utilities have or have not complied with the annual REST standards. Rather, since the initial adoption of the REST rules, the Commission has taken a forward-looking approach by focusing on the quality and cost-effectiveness of affected utilities’ REST Implementation Plans. This rulemaking does not change the Commission’s focus. No changes to the rules are needed as a result of this comment.

APS questions whether the 11/3 Comments have accomplished the objective of eliminating CRS’s concerns regarding RECs because CRS’s email did not conclusively support the 11/3 Comments. CRS stated that the 11/3 Comments language would not constitute double counting, something that APS thought was already clear in the NPRM, but CRS also said that it could not make a conclusive determination without seeing the final rule language and how the rule language is implemented.

CRS’s response to the suggested changes in the 11/3 Comments indicates that those modifications, if implemented as written, will alleviate CRS’s concerns related to REC integrity and double counting. No changes to the rules are needed as a result of this comment.

<p>The modifications set forth in the 11/3 Comments represent a substantial change from the NPRM language for purposes of rulemaking.</p>	<p>The Commission disagrees with this assessment. The Commission finds the changes suggested by Staff to be consistent with the language in the NPRM Preamble and to be clarifications rather than substantial changes. The changes are also consistent with the Commission's not having proposed changes to § 1804(A) and § 1805(A), which both require affected utilities to obtain RECs. No changes to the rules or to the Commission's process for adopting the rules are needed in response to this comment.</p>
<p>The Rule 111(d) rulemaking should not impact this rulemaking, although APS appreciates RUCO's having flagged the long-term issues of RECs.</p>	<p>The Commission agrees that until the specifics of the final EPA Rule 111(d) are known, it would be premature to attempt to respond to it either in policy or in rule. No changes to the rules are needed as a result of this comment.</p>
<p><b>RUCO</b></p>	
<p>RUCO supports Commissioner Brenda Burns and the other Commissioners in their goal of not making ratepayers pay to replace energy that exists on the distribution system. RUCO supports the rule language as modified by the 11/3 Comments and does not consider the 11/3 Comments modifications to have resulted in a substantial change, just in very helpful clarification of the uncertainty surrounding the term "acknowledge." RUCO had the reverse impression of APS in terms of the clarity of the NPRM versus the 11/3 Comments. RUCO was concerned that the NPRM language, specifically "acknowledge," could be viewed and interpreted differently by future Commissions. RUCO found the rule language of the NPRM to be a "somewhat . . . open-ended policy that a Commission could use one way or another," which RUCO believes is consistent with how APS understood it. RUCO views the 11/3 Comments as clarifying comments that do not jeopardize the amount of information that the utilities can submit and the Commission can consider. RUCO believes that the 11/3 Comments provide clarity and will help to reduce the debate that could otherwise occur about what that means. With the suggested modifications in the 11/3 Comments, a lot of the debate is eliminated, while the Commission still has flexibility to consider a company not out of compliance. RUCO would have preferred that the Commission not engage in the rulemaking at all, but supports</p>	<p>The Commission agrees that the modifications in the 11/3 Comments will improve the clarity of the rules and appreciates the supportive comments.</p>

the rule changes with the 11/3 Comments.

It would be a clear claim on a REC and double counting if a compliance requirement in one state were reduced by the amount of kWhs produced by a non-incentivized DG system, and the REC was also acknowledged for compliance purposes by another state. The only other state with a policy that even approaches that type of situation is Vermont, and it is causing Vermont "a bunch of trouble," such as having its RECs banned in Connecticut and having the issue flagged at the FTC. It would be bad policy to restrict possible exports in this way.

RUCO agrees with Staff's statement that CRS always hedges what it says into the record because CRS is concerned about giving its stamp of approval before it sees something in action. RUCO believes that the 11/3 Comments protect against any type of claim on a non-utility owned REC.

RUCO is concerned that the rules will leave ratepayers at risk in terms of federal compliance guidelines in the future. RUCO believes that it is the ratepayers rather than the companies that will be on the hook in the future. RUCO is concerned that if Rule 111(d) goes into effect and uses RECs, Arizona will not be able to use the non-utility owned RECs toward compliance because they do not belong to entities in Arizona. RUCO believes that it is possible to obtain RECs by adjusting the REST surcharge, adjusting the LFCR, or using other mechanisms that would not be complicated or expensive. RUCO also stated that if it is incorrect about the outcome of Rule 111(d), the down side would be that utilities would have valuable solar RECs that they could sell out of state, and the proceeds could be used to reduce customer bills. RUCO emphasized that the Commission could go forward with both the rulemaking and RUCO's proposed policy in the future, as they are not mutually exclusive. RUCO suggested that the following language be incorporated into the REST rules:

Affected utilities, upon approval of the Commission, may be authorized to use non-DG RECs (bundled or unbundled) to satisfy compliance of the DG carve-out. However, the amount of non-DG RECs applied to the carve-out cannot exceed the number of RECs and/or kilowatt-hours produced by customers who have not exchanged their RECs to the utility in their respective service territory.

RUCO believes that this would provide a mechanism for future capture of RECs to mitigate compliance risk in a market-efficient and socially optimal way so that RECs will not be invalidated, and a mechanism can be set up to start obtaining

The Commission appreciates the time and effort RUCO has put into considering the best path to deal with the final EPA Rule 111(d) impacts once they are known. However, until the specifics of the final EPA Rule 111(d) are known, it would be premature to attempt to respond to it either in policy or in rule. No changes to the rules are needed as a result of this comment.

RECs from customers. RUCO said that it is important to implement such a policy now because whenever someone installs solar without an incentive, usually with a third-party system, they enter into a 20-year REC contract, and those RECs are signed off for 20 years to a company that is probably out of state. The longer the Commission waits to act, the more RECs will be untouchable for compliance. RUCO is in favor of the Commission taking additional action aside from this rulemaking to keep RECs in Arizona.

**EXHIBIT F****Economic, Small Business, and Consumer Impact Statement  
Prepared Pursuant to A.R.S. § 41-1057**

Note: The Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. However, under A.R.S. § 41-1057, the Commission is required to prepare a “substantially similar” statement.

**1. An identification of the rulemaking.**

This rulemaking amends A.A.C. R14-2-1805 (“§ 1805”) and R14-2-1812 (“§ 1812”) in the Commission’s Renewable Energy Standard and Tariff (“REST”) rules by doing the following:

- Creating a new § 1805(F) stating that a renewable energy credit (“REC”) created by production of renewable energy not owned by an affected utility is owned by the entity creating the REC and that an affected utility cannot use or extinguish such a REC without the entity’s approval and documentation from the entity, even if the Commission “acknowledges” the reporting of the kilowatt-hours (“kWhs”) associated with the REC;
- Creating a new § 1805(G) announcing that the reporting of kWhs associated with non-utility-owned RECs “will be acknowledged” for reporting purposes, but will not be eligible for compliance with § 1804 and § 1805;
- Eliminating the word “Compliance” from the title to § 1812;
- Amending § 1812(A) to expand the scope of the information to be reported annually by a utility to include “other relevant information”;
- Eliminating the word “compliance” from the introductory language in § 1812(B);
- Amending § 1812(B)(1) to expand the specific information to be reported annually by a utility to include kWhs of energy produced within its service territory for which the affected utility does not own the associated RECs, which must be differentiated from the kWhs of energy for which the affected utility does own the RECs; and
- Amending § 1812(C) to allow the Commission to “consider all available information” when reviewing an affected utility’s annual report filed under § 1812.

The REST rules require an affected utility to serve a growing percentage of its retail sales each year via renewable energy, with a carve-out for distributed energy (“DE”). The REST rules were predicated on utilities acquiring RECs to achieve compliance. In the DE market, RECs were acquired by a utility when the utility gave the entity installing the renewable energy system an incentive. In recent years, these incentives have been nearly or entirely eliminated as market conditions have changed, with greater adoption of DE without incentives. This led to utilities seeking guidance from the Commission as to how they should demonstrate compliance with the DE carve-out of the REST rules when the transaction REC acquisition was predicated upon is no longer occurring.

The Commission has explored this issue in great detail in the context of several consolidated dockets that culminated in Commission Decision No. 74365 (February 26, 2014). That Decision required the Commission’s Utilities Division (“Staff”) to propose new rules. Staff initially proposed to the Commission seven different concepts for a new regulatory approach to the REST

rules to address the changes in the market. After considering these different concepts and stakeholder comments filed in response to those comments, the Commission directed Staff, in Decision No. 74753 (September 15, 2014), to file a Notice of Proposed Rulemaking using specific language originally suggested by Commissioner Brenda Burns in correspondence to the docket. The specific language was intended to allow the Commission to know how many renewable energy kWhs are being produced within affected utilities' service territories through DG, without depriving anyone of a right to own the attributes of a renewable energy product and without weakening, or even being perceived as weakening, the existing REST goals.

The NPRM Preamble stated that the proposed rule changes would clarify and update how the Commission deals with renewable energy compliance and related RECs and would address how utilities that are no longer offering DE incentives in exchange for DE RECs would demonstrate compliance with the DE portion of the REST rules. According to the NPRM Preamble, the proposed rule changes would accomplish this "by noting that the Commission may consider all available information[, including] measures such as market installations, historical and projected production and capacity levels in each segment of the DE market[,] and other indicators of market sufficiency activity." The NPRM Preamble pointed out that utilities will also be required to report renewable production from facilities installed in the utilities' service territories without an incentive and for which the RECs are not transferred to the utilities and that "*these non-utility owned RECs will be acknowledged for informational purposes by the Commission . . . [to] protect the value of RECs and avoid the issue of double counting.*" The NPRM Preamble also stated the following, in reference to the affected utilities' new reporting of non-incentivized DE production within their service territories: "*This reporting is intended to be for informational purposes only.*"

In spite of the NPRM Preamble language indicating that non-utility owned RECs would be acknowledged for informational purposes (*i.e.*, not for compliance purposes), commenters expressed concern that the NPRM proposed rules, especially their use of "acknowledged," were vague and potentially a threat to REC integrity. Commenters expressed concern that acknowledgment would be linked to compliance and would result in double counting of RECs not owned by affected utilities, which some asserted would be a taking of the value of those RECs from their owners and potentially a regulatory taking in violation of the Fifth Amendment Takings Clause. In response to the comments criticizing the NPRM language as vague and potentially damaging to REC integrity and value, Staff filed Comments in the docket on November 3, 2014, ("11/3 Comments") to clarify further the meaning and intent behind the NPRM language. In the 11/3 Comments, Staff eliminated references to "compliance" reporting and clarified that the kWhs associated with RECs not owned by a utility, although reported by a utility, would not be eligible to be used for compliance with the REST rules. Staff asserted that the suggested changes in the 11/3 Comments are intended only to clarify the proposed rule language to reflect what was included in the Preamble. Staff does not believe that the rule language revisions suggested in the 11/3 Comments change the benefits and burdens of the rulemaking as proposed in the NPRM and does not believe that those suggested revisions constitute a substantive change.

The Commission agrees that the suggested modifications in the 11/3 Comments do not result in substantive or substantial changes to the rules as proposed in the NPRM and is adopting those

changes in the final rulemaking, to ensure that the final rulemaking is consistent with the Commission's intent that it be informed of all renewable energy production in Arizona without infringing upon any potential property right in RECs and without weakening or creating the perception of weakening the REST rule standards.

**2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking.**

The changes to the REST rules will impact the electric utilities regulated by the Commission, customers of the electric utilities regulated by the Commission, the solar industry, and the Commission itself. The changes may also impact other renewable energy industries, to the extent they are involved with DE, in the same manner and to the same extent as similarly situated participants in the solar industry would be affected.

**3. A cost benefit analysis of the following:**

**a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.**

The Commission will benefit as a result of receiving a more complete picture of Arizona's renewable energy market by having information on all DE production provided in utility reports required to be filed annually under the REST rules. The Commission will also benefit from receiving and being able to consider any other relevant available information, such as information related to market sufficiency and activity. The Commission will incur minimal added costs from processing this additional information, but these costs should be relatively consistent with the costs the Commission has typically incurred in performing an analysis of the DE market in conjunction with utilities' annual REST Implementation Plans. The Commission does not anticipate that it will need to make any change in personnel resources as a result of the revisions to the rules and does not believe that the changes to the rules should have any impact on any other state agency.

**b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.**

There should be no impact to political subdivisions because the Commission does not have jurisdiction over political subdivisions, and the REST rules do not apply to them.

**c. The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking.**

Electric utilities subject to the REST rules will have a better understanding of the Commission's approach to the DE carve-out of the REST rules in a post-incentive environment. Utilities will be required to report additional information in their annual reports under the REST rules, in the form of data regarding all DE production within their service territories, including DE production for which no incentives have been paid and the RECs are not owned by the utilities. Utilities are already required to meter all DE production within their service territories, so the utilities should already have all of this information available and should not be burdened by the requirement to include it in their reports required to be filed annually under the REST rules. Utilities may also choose to report additional relevant information related to market activity. This information should be readily available to the utility, and a utility would not be significantly burdened if it

chose to include additional relevant information in its annual report. Additionally, any burden on an affected utility from such inclusion would result from the utility's choice rather than as a direct result of the rules.

Members of the solar and any other renewable energy industries involved in DE will be benefited because the rules will clarify the Commission's approach to the DE carve-out of the REST rules in a post-incentive environment, making it clear that the Commission will administer the REST rules in a manner that protects the ownership and value of RECs that are not owned by affected utilities. The Commission understands that some interested persons consider REC ownership to involve property rights that are protected under the Fifth Amendment Takings Clause, and the Commission's rules adopted herein are intended to have no detrimental impact upon any such property rights that may exist. The Commission's revisions to the REST rules are intended to ensure that REC integrity is protected and that double counting of RECs does not occur as the result of any Commission action.

**4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rulemaking.**

The Commission does not believe that this rulemaking will have any impact on private or public employment in any entity directly affected by the rulemaking.

**5. A statement of the probable impact of the rulemaking on small businesses. The statement shall include:**

**a. An identification of the small businesses subject to the rulemaking.**

The Commission does not believe that any of the affected utilities subject to the rules would qualify as small businesses as defined in A.R.S. § 41-1001. The Commission does believe that some solar or other renewable energy industry participants may be small businesses. Status as a small business should not change the manner or extent to which a market participant would be impacted by this rulemaking.

**b. The administrative and other costs required for compliance with the rulemaking.**

Affected utilities will incur minimal additional costs related to the creation and submission of their reports filed annually under § 1812, as the utilities will be required to provide additional information in those reports. The additional costs will be minimal, however, because the new information to be provided should be readily available to the utilities. The changes to the rules do not create any other new obligations.

**c. A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.**

The Commission does not believe that any of the affected utilities subject to the rules would qualify as small businesses as defined in A.R.S. § 41-1001 or that any impact on any of the affected utilities as a result of this rulemaking would be sufficiently significant to make reduction possible or necessary. Nor does the Commission believe that this rulemaking will result in any adverse impacts on any small businesses that may be impacted.

**d. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking.**

Customers will benefit from the certainty the rule revisions will provide regarding the treatment of RECs by the Commission in a post-incentive environment. Customers will be able to retain the value of any RECs they own and thus will be able to use those RECs in any manner that they see fit, including making those RECs available for sale. The Commission understands that some interested persons consider REC ownership to involve property rights that are protected under the Fifth Amendment Takings Clause, and the Commission's rules adopted herein are intended to have no detrimental impact upon any such property rights that may exist. The Commission's revisions to the REST rules are intended to ensure that REC integrity is protected and that double counting of RECs does not occur as the result of any Commission action.

**6. A statement of the probable effect on state revenues.**

The rule changes are not expected to have any impact on state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Commission considered numerous alternative options before deciding upon the rule revisions being adopted through this rulemaking. A wide variety of proposals were put forth in utilities' annual REST Implementation Plans, in the Commission docket that led to Decision No. 74365, by Commission Staff in this docket before the Commission issued Decision No. 74753, and by a variety of interested parties who participated in this matter, including the Residential Utility Consumer Office ("RUCO"), affected utilities, members of the solar industry, and various industry and environmental associations. Each alternative had pros and cons as well as proponents and opponents, and the Commission decided on the rule revisions being adopted through this rulemaking because each other option was generally considered to have at least one of the following flaws: it would increase costs paid by ratepayers through the REST surcharge; it would not preserve the 15 percent overall REST requirement; it would not preserve the DE carve-out; it would not provide adequate protection for non-utility owned RECs; or it would be overly complicated, cumbersome, or costly to implement.

**8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

The Commission has not based any of the rule revisions being adopted herein on any specific data.